69 FR 53677, September 2, 2004

A-201-832
Investigation
POI: 07/01/02-06/30/03
Public Document
GII/O4: MC

August 26, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Investigation of Light-Walled Rectangular Pipe and Tube from Mexico

Summary

We have analyzed comments and rebuttal comments of interested parties in the investigation of Light-Walled Rectangular Pipe and Tube (LWRPT) from Mexico for the period July 1, 2002, through June 30, 2003. As a result of our analysis, we have made changes for the final calculations. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for this final determination.

Background

On April 13, 2004, the Department published the preliminary determination of the antidumping investigation of LWRPT from Mexico. See Light-Walled Rectangular Pipe and Tube from Mexico; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 69 FR 19400 (April 13, 2004) (Preliminary Determination). The period of investigation (POI) is July 1, 2002, through June 30, 2003. We gave interested parties an opportunity to comment on our Preliminary Determination. On July 15, 2004, petitioners,[1] Productos Laminados de

[1] Petitioners in this investigation are California Steel and Tube, Hannibal Industries, Inc., Leavitt Tube Company, LLC, Maruichi American Corporation, Northwest Pipe Company, Searing Industries, Inc., Vest Inc., and Western Tube and Conduit Corporation (collectively, petitioners).

Monterrey, S.A. de C.V (Prolamsa), Galvak, S.A. de C.V. (Galvak)/Hylsa,[2] Regiomontana De Perfiles Y Tubos (Regiomontana) and Perfiles y Herrajes LM, S.A. de CV (LM) submitted case briefs. On July 22, 2004, these same parties submitted rebuttal briefs. The Department received a request for a public hearing from Galvak/Hylsa on May 23, 2004, however, this request was subsequently withdrawn on July 21, 2004. Consequently, no public hearing was held in this investigation.

List of Issues

Below is the complete list of issues in this investigation for which we received comments from interested parties:

I. SALES

General Issues

Comment 1: Whether the Department Should Deny Certain Home Market Billing Adjustments, Rebates and Discounts Not Allocated on a Product-Specific or Sale-Specific Basis

Comment 2: Whether the Department Properly Indicated Where Sales of Respondents Failed the Cost Test

Prolamsa

Comment 3: Whether the Department Should Apply Partial Adverse Facts Available (AFA) for Home Market Sales to Affiliated Resellers that Failed the Arm's-Length Test

Comment 4: Whether the Department Should Apply Partial AFA to Account for Unreported Sales Discovered at Verification

Comment 5: Whether the Department Should Exclude Pre-Primered LWRPT from the Scope of Any Antidumping Duty Order Issued in this Investigation

Comment 6: Whether the Department Should Make an Adjustment for Differences in Prolamsa's Coil Costs

---

[2]The Department collapsed Galvak with its affiliate, Hylsa for the Preliminary Determination. Hereinafter, when appropriate, this entity will be referred to as Galvak/Hylsa. For further details regarding this issue, see Preliminary Determination, 69 FR at 19403.

Comment 7: Whether the Department Should Correct Certain Clerical Errors in its Comparison Market and Margin Programs

Comment 8: Whether the Department Should "Zero" Negative Dumping Margins

Galvak/Hylsa

Comment 9: Whether Galvak and Hylsa's U.S. Sales Should Be Classified as Constructed Export Price Transactions Because Galvak and Hylsa Were the U.S. Importers of Record

Comment 10: Whether Galvak and Hylsa's U.S. Sales Made Through an Affiliated U.S. Reseller Should be Classified as Constructed Export Price Transactions

Comment 11: Whether There Should be a Commission Offset

Comment 12: Whether Movement Expenses and Value-Added Taxes Should be Excluded from the Calculation of Credit Expense

Comment 13: Whether the ASTM Grade Should be Considered in the Department's Product Matching Criteria

Comment 14: Whether the Department Should Revise its Preliminary Level-of-Trade Analysis

Comment 15: Whether the Department Should Correct Minor Errors in its Preliminary Margin Calculation Program and in Data Submitted by Galvak/Hylsa.

Regiomontana

Comment 16: Whether to Calculate Normal Value and Export Price Based on an Actual or Theoretical-Weight Basis

Comment 17: Whether the Department Correctly Calculated the Reconciliation of Regiomontana's Home Market Sales in Regiomontana's Sales Verification Report

Comment 18: Whether the Department Should Classify Sales Made Through U.S. Commissioned Selling Agents as Constructed Export Price Transactions

LM

Comment 19: Whether the Department Should Deny an Adjustment for Home Market

Comment 34: Whether Overhead Expenses from Affiliates are Overstated

Comment 35: Whether Yield Loss Should be Adjusted

Comment 36: Whether Labor Costs Excluded Social Security Taxes

Comment 37: Whether the Total Cost of Manufacturing Should be Adjusted for an Unreconciled Difference

Comment 38: Whether Freight, Insurance, and Handling Charges Should be Included in Reported Costs

Comment 39: Whether the Department Should Correct Minor Errors Relating to Total Cost of Manufacturing

Changes in the Margin Calculations Since the Preliminary Determination

Based upon our analysis of the comments received from interested parties, for the final determination, we recommend making the following changes to the margin calculations used in the Preliminary Determination of this investigation:

1. LM: Based on the verification of LM's responses, we made a revision to the calculation of the U.S. inventory carrying costs to account for a correction relating to the number of days in inventory and correct the formula used to calculate inventory carrying costs by deducting certain discounts from the gross unit price.

2. LM: Based on verification findings, we revised the calculation of the U.S. brokerage and handling charges.

3. LM: We noted that LM inadvertently reported certain expenses as warehousing expenses incurred at the factory, although these expenses are properly categorized as indirect selling expenses. Accordingly, for purposes of the final determination, we set the reported expenses for that warehouse to zero.

4. LM: We deducted, when applicable, warehousing expenses, incurred by the remote warehouses after the merchandise left the factory, from home market prices. The adjustment for these warehousing expenses was inadvertently omitted from the Department's margin calculation in the preliminary determination.

5. LM: We recalculated indirect selling expenses to reflect a correction relating to the indirect selling expense ratio used to calculate these expenses.

6. LM: Since LM was unable during verification to sufficiently document its revisions of the reported charges for freight from its factory to certain of its warehouses, we disallowed any adjustment to home market prices for the freight charges relating to these warehouses.

7. LM: We revised the financial expense ratio calculation to correctly include the monetary correction under Mexican GAAP Bulletin B-10, thus lowering the financial expense ratio.

8. LM: We adjusted the G&A expense ratio calculation for the effect of double counting of indirect selling expenses. This adjustment had the effect of lowering G&A ratio.

9. LM: We adjusted total cost of manufacturing to include the effects of yield loss.

10. Prolamsa: We applied partial adverse facts available to certain sales from Prolamsa to affiliated resellers that failed the arm's-length test, where information concerning downstream sales was not on the record of this investigation.

11. Prolamsa: We excluded inventory carrying costs from the calculation of constructed export price indirect selling expenses.

12. Prolamsa: For certain expenses, we converted the currency by dividing, rather than multiplying.

13. Prolamsa: We increased the reported total cost of manufacturing (TOTCOM) for the unreconciled difference between Prolamsa's cost accounting system and the extended TOTCOM reported to the Department. We also increase the reported TOTCOM to include an amount for the expenses related to the importation of raw material i.e., freight, insurance, and handling charges.

14. Galvak/Hylsa: We corrected the error in the margin calculation program which incorrectly converted U.S. dollar amounts into Mexican pesos using the exchange rate on the date of the home-market sale. The program incorrectly multiplied the U.S. dollar amounts by the dollar-to-peso exchange rate instead of dividing them by the exchange rate. The program then converted the calculated peso amounts back into dollars using the weighted-average exchange rate based on the date of the U.S. sales.

15. Galvak/Hylsa: We corrected the error in the margin calculation program which failed to convert home-market sales prices that were denominated in U.S. dollars into Mexican pesos when determining whether those sales were made at below-cost prices. Instead, the preliminary program incorrectly compared the U.S. dollar prices to the Mexican peso costs.

16. Galvak/Hylsa: We recalculated home market credit expenses to exclude value added taxes.

17. Galvak/Hylsa: We corrected a calculation error for the galvanizing expense variance and applied it to each of the galvanized products.

18. Galvak/Hylsa: In addition to the changes we made to the financial expense ratio at the preliminary determination, we subtracted Galvak and Hylsa's packing expenses from the cost of goods sold denominator. We revised the ratio to include an offset in the numerator of the current portion of the gain on debt restructure from the parent company's 2002 financial statements.

19. Galvak/Hylsa: In addition to the changes we made to the general and administrative expense ratio at the preliminary determination, we subtracted Galvak's packing expenses from the cost of goods sold denominator.

20. Galvak/Hylsa: We revised the reported costs for the coils that were obtained from Hylsa to reflect the major input adjustment made to Hylsa's iron ore purchases

21. Galvak/Hylsa: We revised the financial expense ratio by including the current portion of the gain on debt restructure as an offset to the numerator and also subtracted Hylsa and Galvak's packing expenses from the denominator.

22. Galvak/Hylsa: We revised the general and administrative expense ratio by adding the income for the sale of land, the gain on restructuring bank liability, and bonus expense to and subtracting debt restructuring expenses and general and administrative expenses attributable to affiliates from the numerator as well as subtracting packing expenses from the denominator.

23. Galvak/Hylsa: We adjusted the per-unit total cost of manufacturing for certain control numbers to include costs that were mis-classified as costs related to products sold to third countries and not reported.

24. Galvak/Hylsa: We revised the reported cost of iron ore obtained from affiliated suppliers and adjusted reported direct material costs to reflect the higher of the transfer price, market price, or cost of production in accordance with the major input rule.

25. Regiomontana: We corrected the error in the comparison market calculation program which incorrectly compared theoretical quantities for home market sales with gross unit prices and adjustments based on actual quantities.

26. Regiomontana: We recalculated credit expense for sales in the U.S. and home market due to minor corrections made at verification.

27. Regiomontana: We included the cost of scrap from all production processes and included all

corrections of errors found while preparing supporting documentation for the cost of scrap.

28. Regiomontana: For the interest expense, we included the monetary effect from Regiomontana's financial statements and deducted the year end adjustment for inflation from the cost of goods sold. We also added the depreciation from the revaluation of fixed assets to the cost of goods sold.

29. Regiomontana: We adjusted G&A expense to included the employee profit sharing expense and to exclude the year end adjustment for inflation from the cost of goods sold. We also added the depreciation from the revaluation of fixed assets to the cost of goods sold.

30. Regiomontana: We included the unreconcilable difference from the reconciliation of Regiomontana's cost of manufacture to the reported cost in the RECON field.

31. Regiomontana: We revised the per unit fabrication costs and per unit paint costs to reflect the first day corrections submitted by Regiomontana.

32. Regiomontana: We used the direct material cost from the COP/CV file submitted with the minor corrections on the first day of corrections.

Discussion of the Issues

General Issues

Comment 1: Whether the Department Should Deny Certain Home Market Billing Adjustments, Rebates and Discounts Not Allocated On A Product-Specific or Sale-Specific Basis

Petitioners claim that many of the billing adjustments, rebates and discounts reported by respondents, as offsets to home market price appear to have been based largely on non-subject and non-scope products. Petitioners make this argument based on their claims that certain adjustments were not reported on a product- or sale-specific basis. In particular, petitioners note that, at verification, the Department confirmed that particular billing adjustments claimed by Regiomontana were calculated either on a customer-specific or a product family basis, rather than a product-specific basis. In addition, petitioners note that Prolamsa indicated that some of its billing adjustments were prorated on an invoice or customer-specific basis, rather than a sale-specific basis. Petitioners argue that, unless a respondent solely sells subject merchandise, invoice-specific adjustments will include non-subject merchandise, as well as subject merchandise. Further, petitioners contend that round pipe is sold more often than rectangular pipe and, for this reason, respondents' invoices likely contain a greater quantity and value of non-subject merchandise than subject merchandise.

Citing SKF USA Inc. v. INA Walzlager Scharffler KG, 180 F. 3rd 1370, 1372 (Fed. Cir. 1999)(SKF), petitioners claim that the Federal Circuit has stated that price adjustments that reduce normal value (NV) must pertain solely to subject merchandise. Citing Prolamsa's February 4, 2004, supplemental questionnaire response at 15, petitioners state that Prolamsa claims that its accounting system cannot link credits to specific sales or products. See Petitioner's Case Brief at 11. However, petitioners argue that this fact does not mean that credits were not granted on a sale- or product-specific basis. Petitioners argue that normal business practices dictate that respondents retain documentation that identifies the sales and products for which reductions to price were made. Petitioners contend that if the Department contravenes the Federal Circuit and allows respondents to reduce NV based on credits to home market price that are not sale- or product-specific, respondents could simply report credits on subject merchandise on a sale-specific basis, and prorate or allocate credits on non-subject merchandise on an invoice or customer-specific basis. Petitioners assert that for invoice or customer-specific price adjustments that reduce NV, respondents should be required to look beyond the invoice or the entry and into their accounting systems to document how the price reductions were generated. Petitioners argue that the Department should deny reductions to NV if the respondent makes no effort to eliminate credits for non-subject merchandise.

Further, citing Fijitsu General Ltd. v. United States, 88 F.3rd 1034, 1040 (Fed Circ. 1996)(Fijitsu), petitioners argue that the Department has held that the "party seeking a direct price adjustment bears the burden of proving entitlement to such an adjustment." In order to meet this burden in the present investigation, petitioners argue that respondents would have had to have provided a "means of identifying and segregating billing adjustments paid on in-scope merchandise" from those paid on out of scope merchandise. See SKF, 180 F.3rd at 1377. Citing NTN Bearing Corp. v. United States,[3] Brother Industries[4] and Smith Corona[5], petitioners state that, in the past, when the Department has accepted allocation methodologies proffered by respondents to delineate between price adjustments related to non-scope and scope merchandise, it has done so because the allocation methodology accounted for in-scope merchandise proportionately. In contrast, petitioners argue that, in the present investigation, respondents have not demonstrated that billing adjustments, discounts and rebates allocated across all sales on an invoice or across all sales to a customer were granted on an invoice or customer-specific basis. Further, petitioners assert that the respondents have provided no means to identify or segregate the amount solely related to subject merchandise and have not demonstrated that the same fixed amount was granted for both subject and non-subject merchandise.

Regiomontana argues that it properly reported its billing adjustments on a transaction-specific

---

[3]NTN Bearing Corp. V. United States, 295 F. 3rd 1263, 1267-1268 (Fed. Circ. 2002)(NTN Bearing Corp.).

[4]Brother Industries v. United States, 713 F. 2d 1568, 1580 (Fed. Cir. 1983).

[5]Smith Corona v. United States, 713 F.2d 1568 (Fed. Cir. 1983)

and/or product family-specific basis and that, although some adjustments were recorded on a non-product- or non-transaction-specific basis, it appropriately allocated the adjustments so that the "effects of non-subject merchandise were eliminated." Regiomontana asserts that any non-subject merchandise that occurred in these product family specific adjustments were eliminated by allocating the adjustments over all products sold within the product family receiving the discount. Similarly, Regiomontana asserts that any non-subject merchandise that occurred in adjustments that were customer-specific were eliminated by allocating total adjustments for the customer over that customer's total sales, whereby a customer-specific ratio was applied to sales of that specific customer.

Regiomontana contends that petitioners' claim that the Federal Circuit has stated that price adjustments that reduce NV must pertain solely to subject merchandise is no longer applicable because it is based on case law prior to the Uruguay Round Agreements Act (URAA), which applies to all administrative reviews initiated on or after December 31, 1994. Regiomontana maintains that SKF was decided under *pre*-URAA law when billing adjustments were treated as selling expenses. Regiomontana further argues that since the Department reevaluated its treatment of billing adjustments, the pre-URAA judicial precedents are no longer relevant. Citing SKF USA Inc. v. United States, 118 F. Supp. 2d 1315, 1323 (CIT 2000) and section 782(e) of the Tariff Act of 1933, as amended (the Act), the post-URAA statutory provision, Regiomontana asserts that because the Department initiated the present investigation on September 29, 2003, this case is governed by the antidumping laws as amended by the URAA, and thus should follow its current policy to accept non-transaction-specific and non-product-specific billing adjustments for appropriate circumstances. Regiomontana maintains that these circumstances include those as described in Timken co. v. United States, 16 F. Supp. 2d 1102, 1006 (CIT 1998) where it was stated that "the post URAA statutory provision...directs it to consider information that is less than perfect." Regiomontana further asserts that section 782(e) of the Act dictates that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by {Commerce} if" the information is timely, can be verified, can be used as a reliable basis for reaching the applicable determination, the respondent has acted to the best of its ability in providing and meeting the requirements of the Department, and the information can be used without undue difficulties. Therefore, Regiomontana asserts, a respondent can submit billing adjustments on a non-transaction-specific or non-product-specific basis if it is not feasible for it to do otherwise and if its allocation methods are not unreasonably distortive.

Regiomontana argues that current case law does not support petitioners' argument that billing adjustments must be product or transaction-specific. Citing Torrington Co. v. United States, 146 F. Supp. 2d 845 (CIT 2001) (Torrington), Regiomontana claims that the Court of International Trade (CIT) "expressly rejected petitioners' argument that certain billing adjustments needed to be disallowed." Specifically, Regiomontana argues that in Torrington, the CIT upheld the Department's acceptance of two billing adjustments which were reported on a "customer-specific basis," one of which was recorded without reference to specific models of products and the other which had been recorded as single adjustments on a model-specific basis to the customer's outstanding balance. See

Torrington, 146 F. Supp. 2d at 891. In Torrington, Regiomontana argues that adjustments were allocated "to remove the effect of any out-scope merchandise." Regiomontana contends that, as petitioners do in the present case, the petitioner in Torrington claimed that SKF prevented the Department from accepting the billing adjustments, but the CIT rejected this argument noting that the case was "not directly relevant" because it was decided under pre-URAA law and under the URAA, affirmed that the Department's acceptance of the billing adjustments was "reasonable" even though they included non-scope merchandise. See Torrington, 146 F. Supp. 2d at 895-896. Similarly, Regiomontana argues that in NTN Bearing Corp., 295 F. 3rd at 1268, the Court affirmed the Department's acceptance of NTN's reported billing adjustments which were reported by customer and by "each class or kind of merchandise," which Regiomontana argues is similar to how it reported its billing adjustments. Regiomontana further argues that on appeal, the Federal Circuit affirmed the Department's acceptance of respondents billing adjustments, noting that they were properly accepted under section 782(e) of the Act. See NTN Bearing Corp., 295 F. 3rd at 1267-1268.

According to section 782(e) of the Act, Regiomontana argues that it reported its billing adjustments appropriately and to the best of its ability, since it reported its billing adjustments on a transaction- and product-specific basis, when possible, or allocated billing adjustments to negate any potential effect from the non-subject merchandise. Further, Regiomontana notes that the allocation methodologies were verified by the Department. Citing NTN Bearing Corp., Regiomontana argues that the Statement of Administrative Action, accompanying the URAA, H.R. Rep. No. 103-316, at 870 (1994)(SAA), allows for the Department to "take into account the circumstances of the party, including (but not limited to) the party's size, its accounting systems, and computer capabilities" and also the volume of transactions that a party has to report when determining whether it is feasible for a party to report billing adjustments in a more specific manner. See Regiomontana's Rebuttal Brief at 14-15. Regiomontana asserts that because of its small company size, limited personnel, limited computer capabilities, and large volume of transactions, it could not provide billing adjustment data in any more detail than what was reported.

Further, Regiomontana argues that its two types of allocation methodologies for billing adjustments are not unreasonably distortive. Regiomontana argues that for billing adjustments that were reported either on a per-ton product family-specific basis or that contained both subject and non-subject product, it divided the total billing adjustment by the total tons for that product family to ensure that the adjustment was evenly apportioned among all products in the family, eliminating the potential effects of any non-subject products. For the billing adjustment which was reported on a customer-specific basis, Regiomontana asserts that it employed the methodology that was used by the Department and upheld by the Federal Circuit in NTN Bearing Corp. Additionally, Regiomontana asserts that the possibility of distortion is minimized since 1) it sells all merchandise in the one channel of distribution; 2) the subject and non-subject product that it produces are similar in material input and; 3) the company organizes these products into product families based on similar characteristics such as type of steel, coating/paint and shape. According to NTN Bearing Corp. and Torrington, Regiomontana contends that it would be unreasonable to submit sale-specific adjustment data on non-

subject product to prove that there is no possibility for distortion or to demonstrate the non-distortive nature of the allocation. Therefore, Regiomontana asserts that, because it satisfied all the requirements in section 782(e) of the Act and because it has provided the Department with sufficient information to determine that no distortion took place, the Department should continue to accept Regiomontana's billing adjustments for the final determination.

Prolamsa also disagrees with petitioners and contends that it has demonstrated that its reported adjustments relate to the specific items and the specific invoices for which they were reported. As explained in its questionnaire responses, Prolamsa states that, under its accounting system, billing adjustments, discounts and rebates are recorded through credit and debit notes and that its computer system requires that all such notes be related at the time they are created to the relevant invoice and items on the invoice. See Prolamsa's Rebuttal Brief at 2-3. Therefore, Prolamsa argues that, under its accounting system, it is not possible to record credit or debit notes in the manner suggested by petitioners, *i.e.*, without proper reference to the relevant item or items on the invoice. During verification, Prolamsa contends that, for each home market sales trace, Prolamsa provided the credit or debit note underlying the reported billing adjustment, discounts and rebates. Prolamsa contends that it then further demonstrated that, where the credit or debit note related to a single item on the invoice, it reported an adjustment only to that item in the column ending with "L." Id. If the single item to which the credit or debit note related was non-subject, Prolamsa did not report an adjustment. Where the credit or debit related to multiple items on an invoice, Prolamsa states that it reported an adjustment to the relevant items, allocating the total amount of the credit or debit to the relevant items by relative value in the column ending with "P." Id. In cases such as this, Prolamsa argues that the total credit or debit may have related in part to subject merchandise and in part to non-subject merchandise; therefore, Prolamsa contends that it was proper to allocate a portion of the credit or debit to the reported sales. Furthermore, Prolamsa asserts that allocating the total credit or debit to individual items based on relative value is a reasonable method.

LM contends that petitioners' arguments regarding billing adjustments do not apply to its situation. LM notes that petitioners' case brief does not identify any adjustment reported by LM that should be denied. Instead, LM asserts that petitioners' case brief focuses on adjustments claimed by Regiomontana and Prolamsa. However, LM does offer that petitioners' argument that the Department may not accept any claims based on an allocation of expenses calculated with out-of-scope merchandise is based on a misreading of SKF. LM asserts that SKF does not stand for a prohibition on allocation methodology. LM contends that petitioners were forced to acknowledge this fact when they cited NTN Bearing Corp. in their case brief. Citing section 351.401(g)(4) of the Department's regulations, LM notes that "the Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or foreign like product." Specifically, LM contends that petitioners' arguments are not relevant in its case because it reported all of its adjustments to prices on an invoice and customer-specific basis. Therefore, LM argues that the Department should continue to calculate NV as it did in the Preliminary Determination and grant its adjustments.

Department's Position:

We note that section 351.401(g)(4) of the Department's regulations provides that the Department will not reject an allocation methodology simply because the calculation of it includes sales of non-subject merchandise. We find that respondents have demonstrated entitlement to price adjustments by providing reasonable allocation methodologies that relate proportionately to the reported sale. In this case, these allocation methodologies employed by respondents were verified with no significant distortions or discrepancies noted.[6] Moreover, the record of this investigation indicates that Regiomontana, Prolamsa and LM satisfied all the requirements of section 782(e) of the Act, in that the billing adjustments in question were timely reported, as specific as possible, sufficiently complete, did not cause undue difficulties in calculating a margin, and were verified.

Specifically for Regiomontana, Verification Exhibits 20, 21, 22, 24 and 29 demonstrate that for home market billing adjustments which were reported on a product family-specific basis (BILLADJIH, OTHDIS1H, and OTHDIS2H), the adjustment was evenly apportioned over the entire product family, resulting in a per-ton adjustment and minimizing the effects of non-subject product. See Regiomontana's Sales Verification Report. Additionally, because the product families reported consisted either entirely of subject product or primarily of subject product, the possibility of distortion is minimized. See Regiomontana's supplemental questionnaire response at page 5. Verification Exhibits 21, 22, and 24 demonstrate that for home market billing adjustment, BILLADJGH, the total sum of customer- specific billing adjustments was evenly allocated over the customer's total sales resulting in a per-ton adjustment and minimizing the effects of non-subject product. Id. We note that the CIT, in Torrington, upheld the Department's acceptance of billing adjustments that were reported on a customer-specific basis. See Torrington 146 F. Supp. at 891.

With respect to Prolamsa, petitioners' cite Prolamsa's February 4, 2004, supplemental questionnaire response to support its assertion that Prolamsa is unable to link its reported price adjustments to specific sales or products. However, we note that in a subsequent March 11, 2004, supplemental questionnaire response, Prolamsa clarified its reporting methodology for price adjustments. Specifically, Prolamsa stated that its reported adjustments were either "credit or debit notes related to a line item on the invoice" or "credits or debits prorated to all line items on the invoice." See Prolamsa's March 11, 2004, questionnaire response at 4-5. Moreover, with respect to discounts and rebates, Prolamsa stated "it related the credit notes through which discounts and rebates were recorded to the specific invoice and specific item to which they relate. Where this was not possible, Prolamsa allocated the amount of the credit to all items on the invoice based on their relative value." See Prolamsa's December 24, 2004, questionnaire response at B-19 and B-20. Consequently, a number of Prolamsa's reported price adjustments were reported on a sale-specific basis. For those

[6]See Regiomontana's Sales Verification Report, dated June 24, 2003; Prolamsa's Sales Report, dated July 2, 2004; LM's Sales Verification Report, dated July 1, 2004.

sales where price adjustments were allocated over the total invoice value, *i.e.*, the reported amount of the adjustment was calculated based on the relative value of the subject merchandise, we find this methodology to be consistent with Departmental practice. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy, 67 FR 3155 (January 23, 2002)(Stainless Steel Bar from Italy) and accompanying Issues and Decision Memorandum at Comment 10 (the Department found respondent's allocation of billing adjustments reasonable where respondent allocated its home market billing adjustments from a specific invoice across all sales on that particular invoice).

Therefore, consistent with section 782(e) of the statute and cases such as NTN Bearing Corp., where the courts affirmed the Department's acceptance of respondents' methodologies for billing adjustments that included both in-scope and out-of-scope merchandise, we have continued to accept Regiomontana, Prolamsa and LM's reported billing adjustments for the final determination.

Comment 2: Whether the Department Properly Determined the Results of Respondents' Cost Test

Petitioners allege that the Department misstated the results of the cost test when it stated, in the Preliminary Determination, that:

> "...we disregarded below-cost sales with respect to Galvak/Hylsa...For the remaining respondents less than 20 percent of sales of a given product were at prices less than COP. Therefore, we did not disregard any below-cost sales for these respondents." See Preliminary Determination 69 FR at 19405.

Petitioners argue that sales were disregarded as having been made at prices below cost in substantial quantities for all respondents. Specifically, for LM, petitioners note that LM's analysis memorandum states that "{w}e disregarded sales below cost for certain models sold in the comparison market. See Petitioners' Case Brief at 16. In addition, citing Regiomontana and Prolamsa's analysis memoranda, petitioners note that the Department states, "we did not disregard...home market sales because less than 20 percent of the quantity of the sales were below cost." However, petitioners argue that the model match programs for Regiomontana and Prolamsa show that sales were disregarded because the prices were below cost in substantial quantities. Id. Therefore, petitioners contend that the Department misstated the results of the cost test in Regiomontana and Prolamsa's analysis memoranda, and instead should have stated, "we did not disregard any below cost sales when less than 20 percent of respondents' sales of a given quantity were at prices less than the COP".

Although petitioners acknowledge that the Department's model match programs correctly disregarded sales that failed the cost test in substantial quantities, they stress that the Department must correctly state the results of the cost test in the final determination since an incorrect statement will affect whether a cost investigation is automatically initiated in the subsequent segment of this proceeding.

Respondents did not comment on this issue.

Department's Position:

We note that the model match programs for Regiomontana, Prolamsa and LM show that sales were disregarded for certain products as having been made at prices below cost in substantial quantities. In such cases, we determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, in the Preliminary Determination, we should have stated that:

> "{w}e did not disregard any below cost sales when less than 20 percent of respondents' sales of a certain product were at prices less than the COP. However, we did disregard below cost sales of certain products when greater than 20 percent of respondents sales were at prices less than the COP."

Specifically for Regiomontana and Prolamsa, we note that we did disregard sales below cost for certain models sold in the comparison market. See Regiomontana and Prolamsa's Final Determination Analysis Memorandum, dated August 26, 2004. Therefore, for the final determination, we note that sales for LM, Regiomontana and Prolamsa were disregarded as having failed the cost test, and that this statement should be taken into account for purposes of initiating cost investigations in the subsequent segment of this proceeding.

Prolamsa

Comment 3: Whether the Department Should Apply Partial Adverse Facts Available For Home Market Sales to Affiliated Resellers That Failed The Arm's-length Test

Petitioners argue that the Department should apply partial adverse facts available (AFA) for Prolamsa's home market sales to affiliated resellers that failed the arm's-length test because Prolamsa did not report the affiliated resellers' downstream sales. Petitioners note that, prior to the Preliminary Determination, the Department stated that it would not require Prolamsa to report the downstream sales by its affiliated resellers because Prolamsa reported that these sales were made at arm's-length. However, petitioners further note that the Department cautioned Prolamsa that facts available may be applicable if Prolamsa's statement containing the arm's-length nature of these sales could not be substantiated. See Petitioners' Case Brief at 18.

Petitioners contend that Prolamsa did not demonstrate that its affiliated party sales were made at arm's-length. In fact, petitioners argue that Prolamsa's reported data shows the opposite. Petitioners state that because Prolamsa chose not to report its downstream sales, the proper sales for the determination of NV, given that sales to Prolamsa's affiliated resellers failed the arm's- length test,

are not on the record of this investigation. Therefore, citing, "*Modification Concerning Affiliated Party Sales in the Comparison Market*," petitioners state that:

> "the Preamble to the Department's regulations {states that} the Department 'will require a respondent to demonstrate in each segment of an AD proceeding that the reporting of downstream sales is not necessary...this is accomplished in practice by maintaining a requirement that respondents report downstream sales for all affiliated party sales that do not pass the arm's-length test. See Petitioners' Case Brief at 19.

Moreover, petitioners contend that, in Stainless Steel Sheet and Strip in Coils From France, as it did with Prolamsa in this investigation, the Department "noted that not providing the requested information could subject {the respondent} to application of facts available." See Stainless Steel Sheet and Strip in Coils From France: Notice of Final Results of Antidumping Duty Administrative Review, 67 FR 78773, 78776 (December 26, 2002)(Stainless Steel). Citing Stainless Steel, petitioners argue that the Department should apply partial AFA to Prolamsa, by replacing the affiliate's price with the highest gross unit price of comparable merchandise purchased from another customer that passed the arm's-length test.

Prolamsa disagrees with petitioners and urges the Department not to apply partial AFA to its home market sales to affiliated resellers that failed the arm's-length test. First, Prolamsa argues that petitioners have mischaracterized the reason that it did not report sales by its affiliated resellers to their customers. Prolamsa states that it did not choose to withhold data, as suggested by petitioners, rather, Prolamsa states that it attempted to prepare the data, but was unable to do so. Prolamsa contends that it was unable to report the information because the affiliated resellers' invoices and inventory records are maintained at a general level, such that any data submitted would not have been useable by the Department in calculating Prolamsa's dumping rate. See Prolamsa's Rebuttal Brief at 4. Prolamsa contends that its affiliated resellers purchase pipe and tube products from various suppliers in addition to Prolamsa. Under the affiliated resellers accounting and invoicing systems, Prolamsa states that it is not possible to determine the producer of a product on a specific invoice. Second, Prolamsa argues that, under these same systems, it is not possible to determine specific product characteristics. For example, Prolamsa states that although it may be possible to determine whether a tube is round or square, it is not possible to determine the specification, wall thickness, or diameter of the tube. Consequently, Prolamsa argues that it could not have provided matching characteristics for the sales.

Prolamsa contends that gathering data for the affiliated resellers' sales would have required too much effort due to the rudimentary nature of its affiliated resellers' accounting and invoicing systems. Further, given the lack of detail maintained for these sales, Prolamsa argues that the data could not be used to calculate dumping rates. These facts, contends Prolamsa, are the reason that it did not submit the data. Prolamsa notes that it offered to submit data regarding its affiliates' downstream sales, if the Department had wished it to do so. Since the Department did not request the data, Prolamsa argues that it would not be appropriate for the Department to apply partial AFA to Prolamsa's sales to

affiliated resellers. See Prolamsa's Rebuttal Brief at 5. Therefore, Prolamsa concludes that the Department should not apply partial AFA to its sales to affiliated resellers in the final determination.

Department's Position:

We have applied partial AFA to Prolamsa's home market sales to affiliated resellers that failed the arm's-length test, for the final determination.

In Prolamsa's original section A questionnaire response, in response to the Department's request for information concerning affiliated parties, it stated that it had no home market sales to affiliated parties. See Prolamsa's Section A response at 2. However, in a subsequent response, Prolamsa corrected this statement and reported that it had, in fact, made a number of sales to affiliated resellers in the home market during the POI. See Prolamsa's Section B-C questionnaire response at 2. However, rather than requesting that it not be required to report the downstream sales of its affiliated resellers, Prolamsa simply stated that it was not going to submit data regarding its affiliated resellers downstream sales because "these sales account for a small portion of total home market sales and because these sales were made at arm's-length."[7] Id.

Section 351.403(d) of the Department's regulations states that the Department will normally only grant an exemption for reporting downstream sales of affiliated resellers if sales to the affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the subject merchandise in the market in question or if sales to the affiliated party were made at arm's-length. Since Prolamsa claimed that its sales were made at arm's-length, pursuant to section 351.403(d) of the Department's regulations, the Department, in a subsequent letter, permitted Prolamsa to continue to exclude these downstream sales from its reported home market sales database. However, in permitting this exclusion, the Department stated:

> Section 351.403(d) of the Department's regulations states that the Department will normally only grant such an exemption if sales to the affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the subject merchandise in the market in question or if sales to the affiliated party were made at arm's-length.
>
> Since you state that your sales to affiliated resellers were made at arm's-length, we will not require you to report your affiliated resellers downstream sales to their unaffiliated customers. However, please note that your statement concerning the arm's-length nature of your sales to affiliated resellers is subject to verification. Pursuant to section 776(a) of the Tariff Act of 1930, as amended, if the Department finds that this information cannot be verified, the

[7]Prolamsa also noted that its sales to affiliated resellers accounted for greater than five percent of the total value and quantity of subject merchandise sales in the home market. Id.

Department may apply facts otherwise available. See January 14, 2004, letter to Prolamsa's at 2.

In response to this cautioning of facts available by the Department, Prolamsa once again reiterated that it sales to affiliated resellers' were made at arm's length. See Prolamsa's February 4, 2004, questionnaire response at 2. Specifically, Prolamsa stated that it believed that its sales in the home market to affiliated distributors were made at arm's-length prices because it did not offer special or extraordinary pricing to these customers; rather, it claimed that sales prices to these customers were negotiated based on the same market factors and considerations as sales to unaffiliated customers. Id. Prolamsa further stated that it "expects that the Department would be able to verify the arm's-length nature of its prices to affiliates using the test set out in the Department's notice regarding the treatment of affiliated party sales in the comparison market. Id. After once again proclaiming that its sales to affiliated resellers' were made at arm's-length, Prolamsa then stated that it had attempted to obtain downstream sales information from its affiliated resellers but was unable to do so given the general nature of its affiliates' invoicing and accounting systems. Id. Therefore, while it is true that Prolamsa offered to attempt to provide its resellers' downstream data if the Department would like, it is also true that prior to offering to attempt to gather data regarding its affiliates' downstream sales, Prolamsa also reported that its sales to affiliates were made at arm's-length.

Because Prolamsa stated that its sales to affiliated resellers would pass the Department's arm's-length test, and pursuant to section 351.403(d) of the Department's regulations, we permitted Prolamsa to report its sales to its affiliated resellers rather than requiring it to report downstream sales by its resellers to their first unaffiliated customer. Although Prolamsa did offer to attempt to provide the Department information regarding these downstream sales, Prolamsa also autonomously decided to exclude these sales from its database by attesting to the arm's-length nature of these transactions. We note that it is the Department's long-standing practice that "...the party in possession of relevant information bears the burden of establishing its entitlement to a favorable adjustment." See 19 C.F.R. 351.401(b) of the Department's regulations. In this case, Prolamsa, without requesting permission or guidance from the Department, chose not to report sales by affiliated resellers because it considered these sales to be made at arm's-length. In turn, the Department informed Prolamsa that although it was allowing it to exclude sales, it should be aware that its statements were subject to verification and should its statements not be substantiated, the Department may apply facts available. See Department's Supplemental Questionnaire at 2, dated January 14, 2004. The facts in this case are similar to those in Carbon Steel Flat Products from France, where the Department warned the respondent that it would be subject to the application of facts available if it failed to report downstream sales by affiliated resellers and if sales to the resellers were found to fail the arm's-length test. See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products from France, 67 FR 62114 (October 3, 2002)(Carbon Steel Flat Products from France) and accompanying Issues and Decision Memorandum at Comment 1. Further, in Carbon Steel Flat Products from France, even though the Department noted that it had " used its statutory discretion to limit {the respondent's} reporting requirements for these downstream sales"...it clearly stated...that

"should the quantity or percentage of these sales change, or {respondent} demonstrate the lack of completeness and reliability of its information on the record on this issue, the Department may resort to application of facts available." Id. As in Carbon Steel Flat Products from France, although the Department, pursuant to its regulations, limited Prolamsa's reporting requirement for downstream sales, it did instruct Prolamsa that it had the burden of providing a complete and reliable record in this matter. See Department's Supplemental Questionnaire at 2, dated January 14, 2004. Therefore, 1) because Prolamsa failed to provide such a record and 2) because its affiliated reseller sales failed the arm's-length test, despite its assertions otherwise,[8] the Department, in light of its warnings concerning facts available, is applying facts available to these sales.

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. The record shows that Prolamsa sold subject merchandise to affiliated resellers in the home market, but failed to report these resellers' downstream sales of subject merchandise to unaffiliated customers during the POI, despite being instructed to do so. See the Department's October 28, 2003, questionnaire at A-2. Instead, Prolamsa chose to attest to the arm's-length nature of these sales as a rationale for not reporting the downstream sales of its affiliated resellers. In turn, the Department informed Prolamsa that if its sales to affiliated resellers were found not to be made at arm's-length, it may impose facts available. Therefore, since Prolamsa's sales to affiliated resellers were, in fact, found not to be made at arm's-length and since information concerning the downstream sales of its affiliated resellers is not on the record of this investigation, with respect to these transactions, we have applied FA under section 776(a)(2)(B) of the Act.

In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See *e.g.*, Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870.

In selecting from among the facts available, the Department finds it appropriate to apply an adverse inference because Prolamsa did not cooperate to the best of its ability to provide information concerning its affiliated resellers' downstream sales. As noted above, Prolamsa failed to report the

[8]See Prolamsa's February 4, 2004, questionnaire response at 2.

downstream sales of its affiliated resellers. In our initial October 28, 2003, questionnaire, the Department requested that Prolamsa exclude sales to affiliated resellers and report instead the resales by the affiliates to unaffiliated customers. In response, Prolamsa stated that it made no sales to affiliated home market customers during the POI. See Prolamsa's Section A response at 2. However, in a subsequent submission, Prolamsa reversed this position and stated that it had, in fact, made sales to home market affiliated resellers during the POI. See Prolamsa's December 24, 2003, questionnaire response at 2. However, Prolamsa informed the Department that it was not going to report its affiliated resellers' downstream sales, as previously requested by the Department, because sales to its affiliated resellers were small in quantity and were made at arm's-length. Id. In turn, the Department informed Prolamsa that while it was not required to report its affiliated resellers downstream sales, due to its claims regarding the arm's-length nature of these sales, it should be aware that the Department may apply facts available if Prolamsa's statements could not be substantiated. See the Department's January 14, 2004, questionnaire at 2. Prolamsa responded by saying that it would be extremely burdensome to prepare data regarding its affiliated parties' downstream sales due to the general nature of its affiliates' accounting and invoicing system. However, Prolamsa stated that it expected that the Department would be able to verify the arm's-length nature of its sales to affiliated resellers. Id.

We note that Prolamsa offered two reasons for not reporting its affiliated resellers downstream sales; first, sales to its affiliated resellers were made at arm's-length and second, reporting its affiliated resellers downstream sales would be unduly burdensome. The Department has given Prolamsa several opportunities to provide a reliable record regarding its affiliated resellers' downstream sales. First, as stated above, we requested that Prolamsa report its downstream sales to affiliated resellers. When Prolamsa declined to do so, due to its claims regarding the arm's-length nature of these sales, the Department allowed Prolamsa to continue to exclude the sales in question, providing that its statements could be substantiated. As stated above, and pursuant to section 351.401(b) of the Department's regulations, "...the party in possession of relevant information bears the burden of establishing its entitlement to a favorable adjustment." In this case, Prolamsa did not meet this burden. Prolamsa was in possession of information concerning the arm's-length nature of its sales. The Department's decision to allow it to exclude its affiliated resellers' sales from its home market sales database was based on Prolamsa's statements concerning the arm's-length nature of its sales, and not its claims regarding burdensome reporting requirements. Further, we note that, although Prolamsa now argues that it would have been too "burdensome" to report its affiliated resellers' downstream sales, it did offer to provide the information if the Department "would like." Therefore, it appears that Prolamsa could have provided sales data for its affiliated resellers' downstream sales. However, as noted above, the Department's decision to allow Prolamsa to exclude these sales from its database was based on Prolamsa's claims that these sales were made at arm's-length. Because the record shows that Prolamsa made statements that could not be substantiated, we find that Prolamsa did not act to the best of its ability to provide such information necessary for the Department to make its determination, despite repeated requests and despite being informed by the Department that the application of facts available may be warranted. As such, under section 776(b) of the Act, the Department has made adverse inferences in selecting among the facts otherwise available concerning Prolamsa's sales to

affiliated resellers.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value, 63 FR 8909, 8932 (Feb. 23, 1998). The Department applies AFA "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See Roller Chain, Other than Bicycle, From Japan; Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review, 62 FR 60472,60477 (Nov. 10, 1997); SAA at 870. Petitioners have suggested that the Department use the highest gross unit price of comparable merchandise sold to another customer that passed the arm's-length test as partial AFA.

As partial AFA, we assigned, to the affiliated resellers that failed the arm's-length test, the highest gross unit price of comparable merchandise sold to another customer that passed the arm's-length test. This information was verified with no material discrepancies. See Prolamsa's Sales Verification Report, dated July 2, 2004.

Comment 4: **Whether the Department Should Apply Partial Adverse Facts Available To Account for Unreported Sales Discovered at Verification**

Petitioners state that Prolamsa failed to report two home market sales to an affiliated party and argue that, since these sales do not represent an insignificant percentage of home market sales, the Department should apply partial AFA to these sales. As facts available, petitioners recommend assigning the highest price for each of these two control numbers to the quantity of omitted sales.

Petitioners also note that Prolamsa provided unreported U.S. sales, as a portion of minor corrections, during the U.S. verification. Citing Florex v. United States, petitioners argue that the CIT has held that the omission of even a single U.S. sale is a "serious error" because the "capture of all U.S. sales at their actual price is at the heart of ITA's investigation. See Florex v. United States, F.Supp. 582, 588 (CIT 1998)(Florex). Petitioners argue that in Florex, the Department assigned a rate to unreported sales based on partial AFA. Petitioners request that the Department assign the highest non-aberrant margin to Prolamsa's unreported U.S. sales for the final determination.

Prolamsa disagrees with petitioners and argues that the Department's practice is to accept new information during verification if the information constitutes "minor corrections to information already on the record, or when the information corroborates, supports or clarifies information already on the record." See Prolamsa's Rebuttal Brief at 6. Prolamsa contends that both its home market and U.S.

market sales revisions are "minor corrections" of the type typically made at verification and do not warrant the application of AFA.

Specifically, regarding, home market sales, Prolamsa states that petitioners are incorrect in asserting that the two sales Prolamsa identified as having been made to an affiliated party were not in the database. Prolamsa states that these sales were reported in a database submitted to the Department prior to the Preliminary Determination. Therefore, Prolamsa argues that there is no factual basis for petitioners' request that the Department apply partial AFA to these sales as "unreported home market sales."

With respect to U.S. market sales, Prolamsa contends that prior to the beginning of verification, Prolamsa identified sales that were inadvertently excluded from the U.S. sales database. Prolamsa alleges that these sales constituted an insignificant total of U.S. sales. Prolamsa argues that the Department reviewed the information for these sales during verification, and included the information in its completeness analysis, which established that there were no other unreported sales of subject merchandise. Citing Certain Large Diameter Carbon and Alloy Seamless, Standard, Line and Pressure Pipe from Mexico, Prolamsa asserts that, in past cases, the Department's practice establishes that these types of revisions are "minor" because they were voluntarily disclosed, were small in quantity and value, and the Department was able to verify that there were no other unreported sales of subject merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless, Standard, Line and Pressure Pipe from Mexico, 65 FR 39358 (June 26, 2000)(Seamless Pipe) and accompanying Issues and Decision Memorandum at Comment 7; see also Prolamsa's Rebuttal Brief at 7.

Department's Position:

First, regarding home market sales, Prolamsa is correct in stating that it did, in fact, include the two sales in question in its home market sales database prior to the Preliminary Determination. See Home Market Sales Database, dated March 22, 2004. Therefore, since these sales were reported prior to verification, we will not apply partial AFA to these sales as unreported home market sales.

Regarding U.S. sales, we agree that the information related to these sales was presented to the Department as a clerical error at the outset of verification and that it constitutes a minor correction to information already on the record. Therefore, we have included these two sales in our margin analysis for the final determination. With respect to the reporting of new sales, the decision of the Department on whether to accept new sales at verification is to be made on a case-by-case basis and depends on the significance of the new information. See The Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States, 44 F. Supp. 2d 229 (CIT 1999). The Department's practice is to accept new information during verification only when that information constitutes minor corrections to information already on the record, or when that information

corroborates, supports, or clarifies information already on the record. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Japan, 64 FR 73215, 73234 (March 16, 1999)(Japanese Plate). At the outset of verification, Prolamsa voluntarily disclosed to Department officials the nature of the previously unreported sales to the United States. During verification, Department officials verified the nature of the excluded sales, as well as documentation pertaining to these sales. Moreover, during verification Prolamsa provided quantity and value information to support its assertion that there were no additional unreported U.S. sales, and the Department was satisfied that there were no additional unreported U.S. sales. We find no record evidence to indicate that Prolamsa intentionally withheld these sales from the Department, which constituted a very minor percentage of total U.S. sales, and are satisfied that the record is now complete and accurate regarding this company's sales of subject merchandise during the POI. Furthermore, the facts of the instant investigation are similar to Japanese Plate and Seamless Pipe, where the Department determined to accept the additional sales disclosed at verification because they were minor corrections to information already on the record.

Comment 5: Whether the Department Should Exclude Pre-Primered LWRPT From the Scope of Any Antidumping Duty Order Issued in the Investigation

Prolamsa notes that, prior to the Preliminary Determination, it argued that pre-primered subject merchandise should be excluded from the scope of the investigation because petitioners do not produce this type of product and because the sole U.S. producer of pre-primered subject merchandise stated that such LWRPT should not be subject to antidumping duties. In addition, in support of its assertion that there is only one U.S. producer of pre-primered subject merchandise, Prolamsa notes that it submitted numerous affidavits from purchases/users of such merchandise. Prolamsa now argues that the only information submitted by petitioners, to rebut the information submitted by Prolamsa, was conclusory statements by petitioners' own counsel and Searing Industries, a petitioning company.

Prolamsa asserts that Searing Industries' statements regarding its production of pre-primered subject merchandise were ambiguous and meaningless and contends that the Department did not require Searing Industries to produce credible evidence to prove that it made or sold pre-primered subject merchandise during the POI, or that it planned to do so in the foreseeable future. Rather, Prolamsa argues that, in the Preliminary Determination, the Department concluded that "petitioners provided evidence to show that they do, in fact, manufacture pre-primered...products" and that the Department stated that it has previously determined that "the statute ...does not require that petitioners must currently produce every type of product that is encompassed by the scope of the investigation." See Prolamsa's Case Brief at 3.

Prolamsa urges the Department to revisit this issue in the final determination and exclude pre-primered subject merchandise from the scope of this investigation because it is a specific market niche. Prolamsa states that even if the Department is not required to consider the domestic availability of products within a particular niche in ruling on a scope request, it is likewise not prevented from doing

so.

Moreover, Prolamasa argues that this case differs from those cited in the Preliminary Determination, because here the sole U.S. producer of pre-primered subject merchandise has stated that the product should be excluded. Prolamasa contends that it would be an abuse of discretion for the Department to deny the U.S producer's request based on the objection of companies, such as Searing Industries, that have not submitted any credible evidence that they produce the product. Furthermore, Prolamsa notes that imposing duties on pre-primered subject merchandise would not serve any remedial purpose.

Petitioners argue that the Department properly included pre-primered subject merchandise in the scope of the investigation for the Preliminary Determination and argue that it should continue to do so for the final determination. Petitioners note that first, they did provide evidence to show that they do, in fact, manufacture pre-primed products. In addition, petitioners note that Prolamsa has not rebutted this fact. Second, petitioners note that the statute does not require that petitioners currently produce every type of product encompassed by the scope of the investigation. Moreover, petitioners take exception to Prolamsa characterization of the affidavit from petitioner Searing Industries as ambiguous, meaningless and inaccurate. Petitioners note that the affidavit clearly states, as signed by the Vice President of Marketing and Sales, that Searing Industries produces and sells pre-primered subject merchandise in its normal course of business. Petitioners argue that statements to the contrary in affidavits placed on the record by Prolamsa indicate that the importers that attested to those affidavits are not knowledgeable of Searing Industries' business practices. Further, petitioners argue that even if they had not produced pre-primered subject merchandise in this investigation period, the Department could include the product within the scope because, as noted by the Department in the Preliminary Determination, "the statute does not require that petitioners must currently produce every type of product that is encompassed by the scope of the investigation." See Petitioners' Rebuttal Brief at 7. Therefore, petitioners argue that the Department should continue to include pre-primered subject merchandise in the scope of the proceeding.

Department's Position:

Based on the evidence presented in this investigation, we find that pre-primered subject merchandise should not be excluded from the scope of this investigation. Although Prolamsa argues that pre-primered subject merchandise should be excluded because petitioners do not manufacture this product, the statute does not require that petitioners currently produce every type of product that is encompassed by the scope of the investigation. See *e.g.* Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan, 65 FR 42985 (July 12, 2000) and accompanying Issues and Decision Memorandum at Comments 1 and 2 (Hollow

Products).[9] In addition, petitioners have provided evidence to show that they do, in fact, manufacture pre-primered products.[10] Specifically, petitioners provided an affidavit from Searing Industries, a petitioning firm, wherein the Vice President of Marketing and Sales clearly stated that Searing Industries did in fact produce pre-primered subject merchandise.[11]

Prolamsa also argues that pre-primered subject merchandise should be excluded from the scope because it is a specific market niche. In this case, the scope of this investigation specifically covers all welded, carbon-quality LWRPT of a particular size, regardless of specification.[12] As evidenced by this language from the scope, it is clear that there is no intention to make exceptions for products whose use may be restricted due to further processing. Given the clarity of petitioners' request to include pre-primered LWRPT within the scope and the apparent ease of administering its inclusion, we find no reason to exclude pre-primered LWRPT from the scope of this investigation. Therefore, given the scope language asserted by petitioners, the positions of petitioners and the absence of any ambiguities or administrability problems, we conclude that pre-primered subject merchandise should be included in the scope of this investigation.

Comment 6: Whether the Department Should Make an Adjustment for Differences in Prolamsa's Coil Costs

Prolamsa argues that the Department should make a circumstance-of-sale (COS) adjustment for differences in Prolamsa's coil costs that are directly related to the market in which subject merchandise is sold. Petitioners disagree with Prolamsa and argue that there is no legal or factual basis on which to grant such an adjustment.

We cannot address certain aspects of Prolamsa's and petitioners' arguments without

---

[9]See also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand From Mexico, 68 FR 42378 (July 17, 2003) (no change in the final determination).

[10]See Petitioners March 4, 2004, submission at 3; see also, Petitioners November 3, 2003, submission at 2.

[11]We note that Prolamsa argues that there is just one U.S. producer of pre-primered subject merchandise and that this producer objects to the inclusion of pre-primered LWRPT in the scope of this investigation. However, this affidavit from Searing Industries counters Prolamsa's claim regarding the quantity of U.S. producers of pre-primered subject merchandise.

[12]See Notice of Initiation of Antidumping Investigations: Light-Walled Rectangular Pipe and Tube from Mexico and Turkey, 68 FR 57668 (October 6, 2003)

referencing business proprietary information. Therefore, we have addressed this argument in a separate proprietary memorandum. See Memorandum from Jeffrey May, Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary, Regarding Circumstance of Sale Adjustment, dated August 26, 2004.

Department's Position:

We find that a COS adjustment is not warranted in this matter. For further details, see Memorandum from Jeffrey May, Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary, Regarding Circumstance of Sale Adjustment, dated August 26, 2004.

Comment 7: Whether the Department Should Correct Certain Clerical Errors in its Comparison Market and Margin Programs

Prolamsa contends that the Department made two errors in the Preliminary Determination, which should be corrected for the final determination. First, Prolamsa states that the Department incorrectly included domestic inventory carrying costs in the calculation for the constructed export price (CEP) indirect selling expenses. Second, Prolamsa contends that the Department incorrectly converted currencies from dollars to pesos in the comparison market program.

Petitioners did not comment on this issue.

Department's Position:

We agree with Prolamsa and have corrected these issues for the final determination. See Prolamsa's Final Determination Analysis Memorandum, dated August 26, 2004, for further details.

Comment 8: Whether the Department Should "Zero" Negative Dumping Margins

Prolamsa argues that the Department's practice of "zeroing" is inconsistent with its obligation to determine the existence of margins of dumping in conformity with the methodology provided for by U.S. law and the AD Agreement. Prolamsa contends that the World Trade Organization (WTO) Appellate Body's decision in European Communities - Antidumping Duties on Imports of Cotton-Type Linen from India, WT/DS141/AB/R(March 1, 2001) (Bed Linens), contains the authoritative interpretation of the AD Agreement on this point. In Bed Linens, Prolamsa asserts that the Appellate Body found that the practice of zeroing is impermissible and in violation of the AD Agreement because it does not result in a fair comparison of a weighted- average NV with a weighted average of all comparable export transactions, as required by Article 2.4.2.

Petitioners did not comment on this issue.

Department's Position:

We disagree with Prolamsa and have not changed our calculations of the weighted average dumping margin as suggested by the respondent for the final determination. The CIT has upheld the Department's treatment of non-dumped sales in Corus Engineering Steels, Ltd. v. United States, Slip Op. 03-110 at 18 (CIT August 27, 2003); Bowe Passat Reiningungs-und Waschereitcechnik GmbH v. United States, 240 F.Supp. 2 d 1228 (CIT 2002). Furthermore, the Federal Circuit has affirmed the Department's methodology as a reasonable interpretation of the statute. See Timken Co. v. United States, 354 F. 2d 1334 (Fed. Cir. 2004)(Timken).

With regard to Prolamsa's argument that the WTO Appellate Body ruling in the Bed Linens renders the U.S. interpretation of its statute as inconsistent with its international obligations, the Federal Circuit has addressed and rejected this contention in Timken. The Appellate Body's decision in Bed Linens is not binding on the United States. Prolamsa's contention that the United States should change its methodology in response to a WTO dispute to which the United States was not even a party is not consistent with U.S. law. (See *e.g.* 19 U.S.C. 3533 (g), which states that an agency may not change a regulation or practice pursuant to a WTO decision unless and until certain criteria are met.) Our decision is also in accordance with Departmental practice. See, *e.g.*, Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review, 69 FR 33630 (June 16, 2004) and accompanying Issues and Decision Memorandum at Comment 4**;** see also Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea, 69 FR 17645 (April 5, 2004) and accompanying Issues and Decision Memorandum at Comment 16.

Galvak/Hylsa

Comment 9: **Whether Galvak and Hylsa's U.S. Sales Should Be Classified as Constructed Export Price Transactions Because Galvak and Hylsa Were the U.S. Importers of Record**

Petitioners do not agree with the Department's preliminarily classification of Galvak and Hylsa's U.S. sales as export price (EP) transactions. Petitioners claim that Hylsa, Galvak, or their parent Hylsamex, were the "importers of record for their shipments to the United States," which involves activities in the United States. Petitioners also state that the act of importing determines the liability for antidumping duties and other customs duties.

Petitioners argue that the Federal Circuit has found that U.S. sales for which the U.S. importer is affiliated with the foreign producer or exporter must be classified as CEP transactions. Petitioners believe the "same rule should apply if the importer and the foreign producer/exporter are the same party," and cite AK Steel Corporation v. United States, 226 F.3d 1361, 1373 (Fed. Cir. 2000) (AK Steel), where the Federal Circuit stated:

> when describing EP/CEP distinction, this court has repeatedly relied on the affiliate relationship between the producer/exporter and the importer. See, *e.g.* NSK Ltd., 115 F 3rd at 958 ("The United States price will be the exporter's sales price {now CEP} if the importer and exporter are related."); see also Sharp Corp. v. United States, 63 F. 3d 1092, 1094 (Fed. Cir. 1995) (Sharp)("Commerce used the ESP {now CEP} if the foreign manufacture imports through a related company in the United States.")

In addition, petitioners assert that the Federal Circuit has recognized that U.S. sales should be classified as CEP transactions "if the importer and exporter are related." See Sharp. Petitioners claim that Galvak and Hylsa's parent company, Hylsamex, was the importer for some of Galvak and Hylsa's sales. Consequently, those sales should be classified as CEP transactions. In summary, petitioners believe that the Department should classify Galvak and Hylsa's U.S. sales as CEP transactions because of the "affiliation of the importer with the producer and exporter."

Galvak/Hylsa responds that past decisions by the Federal Circuit have not held that sales to an affiliated importer must always be classified as CEP sales. Instead, Galvak/Hylsa assert that the Federal Circuit's past decisions have determined only that transactions in which the first sale to an unaffiliated customer was contracted in the United States by an affiliate located in the United States must be classified as CEP sales. Galvak/Hylsa cites AK Steel, where the Federal Circuit explained that:

> {T}he critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate.... A transaction, such as those here, in which both parties are located in the United States, and the contract is executed in the United States cannot be said to be "outside the United States. Thus, such a transaction cannot be classified as an EP transaction. Rather, classification as an EP sale requires that one of the parties to the sale be located "outside the United Sates," for if both parties to the transaction were in the territory of the United States, it is not possible for the transaction to be outside the United Sates.

According to this ruling, respondent argues that the classification of the sale depends on the location of the person selling to the unaffiliated customer and the location where the contract was executed. Because Galvak, Hylsa, and Hylsamex are all located in Mexico and enter into sales agreements with unaffiliated customers outside of the United States, respondent contends that its sales cannot be classified as CEP sales.

Galvak/Hylsa also argues that the passage from the Federal Circuit's decision in Sharp, quoted by petitioners was intended to provide an overview of the statutory provisions and not to establish a firm rule for determining when the CEP classification is appropriate. Galvak/Hylsa believes that the relevant sentence from the Sharp decision is the following:

"Commerce uses ESP {the predecessor for CEP} if the foreign manufacturer imports through a related company in the United States."

Galvak/Hylsa asserts that because Galvak, Hylsa, and Hylsamex did not export through a related importer located in the United States, the Sharp decision is not applicable in this case. Furthermore, respondent states that Hylsamex did not act as the importer of record for transactions in which Galvak or Hylsa acted as the exporter. Hylsamex acted as the importer of record only for sales on which it was the exporter. Thus, respondent asserts that there is "no basis" for petitioners' argument that sales should be classified as CEP transactions due to the affiliation of the importer with the producer and exporter, because the exporter and importer were the same entity for all sales.

Galvak/Hylsa makes the point that even if AK Steel did require that all sales through affiliated importers must be classified as CEP sales, it does not follow that sales in which the exporter and importer were the same person must also be classified as CEP sales. Galvak/Hylsa notes that the statute defines affiliation as a relationship between two or more separate persons, which include the following relationships: members of a family...; an officer or director of an organization and such organization; partners; employer and employee; any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; or any person who controls any other person and such other person. See section 771(33) of the Act. According to this definition, a person or company is not considered to be an affiliate of itself.

Finally, Galvak/Hylsa notes that petitioners' proposed change in the classification of these sales would not have any impact on the dumping calculations. Under section 772(d) of the Act, the only expenses deducted as special CEP price adjustments are expenses incurred within the United States. Because all of the selling activities performed by Galvak, Hylsa, and Hylsamex occurred outside of the United States, there would be no expenses to deduct under the CEP adjustments.

Department's Position:

As noted in the preliminary determination of this investigation, for the price to the United States, we used EP or CEP as defined in sections 772(a) and (b) of the Act, respectively. See Preliminary Determination, 69 FR at 19403 (April 6, 2004). Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act. In addition, the SAA at 822-23 states that if the first sale to the United States is made to an unaffiliated purchaser by the producer or exporter

in the home market, then the Department will consider it an EP sale. If the first sale to an affiliated party is made in the United States, then the Department will consider it a CEP sale.

As required by Section 772(a) of the Act, and as outlined by the SAA, we calculated an EP for all of Galvak/Hylsa's sales because the merchandise was sold directly by Galvak/Hylsa outside of the United States to the first unaffiliated purchaser in the United States prior to importation, satisfying the requirements for an EP sale. See Galvak's Section B and C questionnaire response, dated December 31, 2003, at 58; see also Hylsa's Section B and C questionnaire response, dated December 31, 2003 at 55.

Petitioners argue that because U.S. sales for which the U.S. importer is affiliated with the foreign producer or exporter are typically classified as CEP, the same rule should be applied to companies where the importer and foreign producer/exporter are the same party. However, neither the Act nor the Department's regulations state that CEP should be applied when the importer and foreign producer/exporter are the same party. As noted by the respondent, the definition of affiliated parties in the Act does not include an entity being an affiliate of itself. In any event, the sales were made by the producer/exporter outside of the United States and therefore are EP transactions. Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 68 FR 68341, 68344 (December 8, 2003)(no change in final results). In this case, the Department notes that the importer and exporter are not related. The importer and exporter are the same company. As noted by the respondent, Galvak/Hylsa was the importer and exporter for its sales, while Hylsamex acted as the importer of record only for sales on which it was the exporter. See Galvak/Hylsa's Section A questionnaire response at 22. Because Galvak/Hylsa's parent company, Hylsamex, was not the importer of record for Galvak/Hylsa's exports, the importer and exporter are not related for the sales of subject merchandise during the POI. The importer and exporter are the same entity, and as discussed above, the Act does not consider an entity to be affiliated with itself. Thus, this argument does not apply to this case. Lastly, as noted by the respondent, the proposed change would not affect the margin. Therefore, consistent with the Department's practice, we have continued to treat Galvak/Hylsa's U.S. sales as EP transactions.

Comment 10: **Whether Galvak and Hylsa's U.S. Sales Made Through an Affiliated U.S. Reseller Should be Classified as Constructed Export Price Transactions**

Petitioners argue that certain sales which the Department preliminarily found to be EP should be classified as CEP. In the Preliminary Determination, the Department found that a small percentage of U.S. sales were EP based on the fact that the affiliated reseller provided minimal administrative services for those sales. See Petitioner's Case Brief at 26.

In determining these transactions to be EP transactions, petitioners compare the Department's reasoning to the third prong of the "PQ Test" for determining whether sales are EP or CEP. That

prong is whether "the related selling agent in the United States acted only as a processor of sale-related documentation and a communication link with the unrelated U.S. buyer." Petitioners state that the Federal Circuit in AK Steel held that this test is "contrary to the express terms defining EP and CEP in the antidumping statute as amended in 1994." See Petitioner's Case Brief at 26.

According to petitioners, sections 772(b) and 772(d) require the classification of U.S. sales as CEP transactions whenever the producer sells through an affiliated reseller in the United States, even if the selling activities of the reseller are minor, administrative, and pertain to a small percentage of U.S. sales. Thus, petitioners argue that the Department should classify the sales made by Galvak and Hylsa's affiliated reseller in the United States as CEP transactions.

Galvak/Hylsa states that only two U.S. sales were made, on paper, through its U.S. affiliate, Galvacer America. Galvak/Hylsa contends that Galvacer America had no role in these sales and incurred no expenses in the United States in connection with them. The negotiations for these sales were handled by Galvak personnel located in Mexico, and although the invoices were issued in the name of Galvacer America, they were prepared by an employee of Galvak. The mailing address on the documents was the address for Galvacer's accountant in Houston, as there were no Galvacer America employees located in Houston. The payments received by the accountant were deposited into Galvacer America's account.

Galvak/Hylsa states that because these sales represent such a small portion of its U.S. sales, the Department should exclude them from the sales database. However, if included, they should be classified as EP sales.

Galvak/Hylsa notes that petitioners base their argument for classifying these sales as CEP sales on the decision by the Federal Circuit in AK Steel. However, Galvak/Hylsa contends that the AK Steel decision did not hold that a sales contract executed outside of the United States by personnel employed by the foreign producer on behalf of its U.S. affiliate should be "automatically" considered a CEP sale. Instead, the Federal Circuit reserved judgement on that issue, stating that "{w}hile we can hypothesize a sales contract between two U.S. domiciled entities that is entirely executed outside the United States, we make no determination regarding whether such a sale would be classified as an EP or CEP sale." See Respondent's Rebuttal Brief at 3.

Finally, Galvak/Hylsa notes that the proposed change in the classification of these sales would not impact the dumping calculations. Because all of the selling activities for the sales through Galvacer America occurred outside of the United Sates, there would be no expenses to deduct under the CEP adjustments.

Department's Position:

We agree with the respondent. We note that Galvak/Hylsa's affiliated reseller in the United States, Galvacer America, made the two disputed sales only on paper. At the time these sales

occurred, Galvacer America did not have employees in Houston, and the address used on invoices was the address for Galvacer America's independent U.S. accountant. All negotiations for these sales were handled by Galvak personnel located in Mexico, and the invoices were also prepared by an employee of Galvak. In addition, Galvacer America never took possession of the merchandise. It was shipped directly from Galvak/Hylsa's production facility in Mexico to the unaffiliated U.S. customer. See Galvak/Hylsa's March 11, 2003, questionnaire response at 23. In summary, Galvacer America played no role in the sales, other than receiving payment.

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States..." In this case, the subject merchandise was first agreed to be sold before the date of importation outside of the United States, as negotiations for these sales were handled by Galvak personnel located in Mexico, and the invoices were prepared by an employee of Galvak, located in Mexico. Since we have found that the invoice date is the most appropriate sales date for this investigation, and the invoices for this sale were prepared in Mexico at Galvak's plant, these sales are consistent with the definition of EP sales. Our treatment of these sales as EP sales in the Preliminary Determination is consistent with Departmental practice. Specifically, in Prestressed Concrete Steel Wire Strand From Mexico, the Department stated that although it recognized that the respondent's "affiliated reseller in the United States provided certain administrative services pertaining to the reported EP sales," its "analysis of sales documents in the questionnaire response, indicated that these services were minor and that the invoicing was done by {the respondent} and payment was made to {the respondent}." See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand From Mexico, 68 FR 42378 (July 17, 2003)(Concrete); Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350 (December 8, 2003)(no change in the final results of this case). Therefore, in Concrete, the Department found that CEP was not otherwise warranted based on the facts on the record, and concluded that the sales were, in fact, EP sales. Id. Similarly, in this present case, we find that the facts on the record do not warrant classification of the sales in question as CEP sales.

Further, contrary to petitioners' assertion, the Department did not use or consider the "PQ Test" for determining whether these sales are EP or CEP sales. With respect to the prong which has been found to be contrary to the antidumping statute (whether "the related selling agent in the United States acted only as a processor of sale-related documentation and a communication link with the unrelated U.S. buyer"), the Department notes that for the disputed sales, there appears to be no selling agent in the United States to act as a processor of sale-related documentation or to act as a communication link. The only activity of Galvacer America appears to be an accountant to collect payment. Thus, not only has the Department not considered this "prong" in our decision, it would not apply in this case due to the circumstances of the sales.

In circumstances where an affiliated importer does not have business premises or employees in the United States, and the overseas producer conducts all of the importer's activities, including making the sale, out of its overseas headquarters, the Department considers these transactions to be EP transactions. See Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review, and Preliminary Determination To Not Revoke Order in Part: Canned Pineapple Fruit from Thailand, 68 FR 38291 (June 27, 2003)(no change in the final results), where we state that:

> We calculated an EP for all of TIPCO's sales because CEP was not otherwise warranted based on the facts of record. Although TMC is a company legally incorporated in the United States, the company does not have either business premises or employees in the United States. TIPCO employees based in Bangkok conduct all of TMC's activities out of TIPCO's Bangkok headquarters, including invoicing, paperwork processing, receipt of payment, and arranging for customs and brokerage. Accordingly, as the merchandise was sold before importation by TMC outside the United States, we have determined these sales to be EP transactions.

In this case, the circumstances are very similar. At the time of these sales, as discussed above, Galvacer America had no business premises or employees in Houston, and all activities, with the exception of receipt of payment, were processed, and sales were made, by Galvak/Hylsa in Mexico.

Therefore, consistent with the Department's practice, we have continued to treat these U.S. sales as EP transactions.

Comment 11: **Whether There Should be a Commission Offset**

Petitioners assert that in the Department's Preliminary Determination, a commission was deducted from home market price, but no commission was present in the United States. Petitioners argue that section 351.410(e) of the Department's regulations requires a commission offset to EP and CEP in this circumstance.

Galvak/Hylsa responds that the Department did make a commission offset adjustment to U.S. price in its preliminary determination, and that no further adjustment is warranted for the final determination.

Department's Position:

As noted by Galvak/Hylsa, the Department included a commission offset in the Preliminary Determination comparison market program. See Comparison Market program at line 1200 of the margin program output log. The Department determines that no additional adjustments are needed regarding this issue in the final determination.

Comment 12: **Whether Movement Expenses and Value-Added Taxes Should be**

Excluded from the Calculation of Credit Expense

Petitioners cite Galvak/Hylsa's December 31, 2003, supplemental questionnaire response, which states that the reported home market "credit expense for each sale was calculated by multiplying the total amount due from the customer for each sale by the weighted-average period from shipment to payment...The total amount due for each sale was based on the tax- and freight included price." Petitioners state that the credit period and interest rate should be multiplied by only the gross price in calculating the credit expense, and that the Department should reduce the reported credit expense in the home market by the ratio of freight and value-added taxes (VAT) to gross price.

Galvak/Hylsa states that the invoices issued for both home market and U.S. sales state the line item price on an f.o.b. plant basis, and contain separate charges for transport of merchandise to the customer. Responding to petitioners' argument, Galvak/Hylsa asserts that if the invoiced amounts for transport are not included in the home market credit calculation, they also should not be included in the U.S. credit calculation, and notes that because the invoiced amounts for U.S. transport tend to be higher, the calculation of the credit expense net of the invoiced amounts would reduce the U.S. credit expense by more than it would reduce the home market credit expense, thus reducing the overall dumping margin.

Although this would be in Galvak/Hylsa's interest, it believes the methodology is not consistent with the Department's methodology. By including the invoice amounts for transport in the f.o.b plant line item price, the effect is to convey delivered prices. Where a producer reports its prices on a delivered basis, the Department's practice is to calculate the credit expense based on the delivered, invoice price. There is no reason to change that methodology because the producer has shown the amounts charged for transport separately on the invoice.

Respondent notes that, in Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada, 59 FR 18791, 18796 (April 20, 1994) (Steel Wire Rod from Canada), the Department stated the following:

> Where freight and movement charges are not included in the price, but are invoiced to the customer at the same time as the charge for the merchandise, the Department considers the transaction to be similar to a delivered price transaction since the seller may consider its return on both transactions in setting price. Thus we have revised the methodology used in our preliminary determination for Ivaco and Stelco to add to both USP and FMV the freight and other movement charges to the customer, and deducted the corresponding freight expense incurred by respondents on these transactions. This methodology is consistent with our treatment of these expenses where they are included in the gross price. Since we now have, in effect, a gross price that includes the movement charge, it is appropriate to include the movement charge in calculating imputed credit. Accordingly, we have recalculated imputed credit for both respondents to reflect this addition to price, where appropriate.

Galvak/Hylsa asserts that the purpose of the "credit expense" calculation is to determine the economic cost to the seller of allowing the customer to delay its payment. When Galvak/Hylsa allows customers to delay payments, it agrees to delay payment of the total invoice amount, which includes the f.o.b. plant line item price, the amount for transport, and VAT. The cost to the seller is equal to the interest on the total invoice amount for the period of the delayed payment. Thus, the credit expense calculation should be based on the full invoice amount. Galvak/Hylsa believes that calculating the credit adjustment without reflecting the total amount due from the customer improperly understates the economic effect of the decision to extend credit.

Department's Position:

First, we note that it is the Department's stated policy to use prices, charges and adjustments on a VAT-exclusive basis. See Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 67 FR 63616 (October 15, 2002) and accompanying Issues and Decision Memorandum at Comment 8; see also See Silicon Metal from Brazil: Preliminary Results of Antidumping Administrative Review and Notice of Intent to Revoke Order in Part, 67 FR 51539, 51543 (August 8, 2002); aff'd Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part, 67 FR 77225 (December 17, 2002). To that end, it is the Department's practice to calculate credit expenses on a VAT-exclusive basis. See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 69 FR 32492 (June 10, 2004) and accompanying Issues and Decision Memorandum at Comment 5 (the Department revised respondent's home market credit expense calculation to remove VAT); see also Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea , 66 FR 3540 (January 16, 2001) and accompanying Issues and Decision Memorandum at Comment 12 ("{t}he Department's practice is to calculate credit expenses exclusive of VAT because the imputed credit factor is applied to the gross unit price exclusive of VAT.") We note that Galvak/Hylsa reported its home market gross unit prices on a VAT-exclusive basis.[13] See Galvak/Hylsa's Section B Questionnaire Response at 22. Therefore, pursuant to Departmental practice, the Department will reduce the gross unit price in the home market by the amount of VAT in calculating credit.

With respect to movement expenses, during the POR, Galvak/Hylsa sold subject merchandise to its home market and U.S. customers on a delivered basis. Specifically, Galvak/Hylsa issued invoices which listed the line-item sales price on an f.o.b. plant basis, and then separately listed the charges on

[13]Although Galvak/Hylsa reported its home market gross unit price on a VAT-exclusive basis, it calculated its home market credit expense using a gross unit price that included VAT. See Galvak's Section B and C questionnaire response, dated December 31, 2003, at 37; see also Hylsa's Section B and C questionnaire response, dated December 31, 2003 at 37.

the same invoice for transporting the merchandise to the customer. See Galvak's Section B and C questionnaire response, dated December 31, 2003, at 22; see also Hylsa's Section B and C questionnaire response, dated December 31, 2003 at 21. Since Galvak/Hylsa invoiced the customer for the sales price, as well as the freight expense, the delivery terms are part of the terms of the sale. Because the credit expense adjustment is meant to reflect the loss attributable to the time value of money, when the seller allows the customer to delay payment of the total invoice amount, including transportation, the time value for those expenses must also be included in the calculation of credit expense. Just as the seller incurs an opportunity cost when it allows the extended repayment of merchandise, it also incurs an opportunity cost when it allows the extended repayment of transportation charges. Accordingly, in the final determination, and consistent with Departmental practice, the Department has continued to include movement expenses in home market imputed credit expenses to reflect imputed credit expenses associated with freight revenue. See Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19153 (April 12, 2004) and accompanying Issues and Decision Memorandum at Comment 9 (where the Department added movement charges to gross unit price for purposes of calculating home market credit expenses). This approach is also consistent with the approach taken in the Steel Wire Rod from Canada, 59 FR 18791, 18796 (April 20, 1994) (in which the Department calculated imputed credit expenses associated with freight revenue, stating "where freight and movement charges are not included in the price, but are invoiced to the customer at the same time as the charge for the merchandise, the Department considers the transaction to be similar to a delivered price transaction since the seller may consider its return on both transactions in setting price. Thus we have revised the methodology ... to add ... the freight and other movement charges to the customer... This methodology is consistent with our treatment of these expenses where they are included in the gross price. Since we now have, in effect, a gross price that includes the movement charge, it is appropriate to include the movement charge in calculating imputed credit."). See also Notice of Amended Final Antidumping Duty Determination of Sales at Less Than fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 60194, 60195 (December 3, 2001) and Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination to Revoke in Part, 64 FR 2173, 2179 (January 13, 1999) (where the Department found the omission of freight revenue from the home market credit expense calculation to be a clerical error).

Comment 13: **Whether the ASTM Grade Should be Considered in the Department's Product Matching Criteria**

Galvak/Hylsa asserts that section 771(A) of the Act requires the Department to compare "merchandise which is identical in physical characteristics with, and was produced in the same country by the same person...." When NV cannot be calculated based on identical products, respondent contends that the Department is required by section 771(B) of the Act to identify the most "similar" products, after considering the component materials, uses and commercial value.

In its Preliminary Determination, the Department used the following criteria to match U.S. sales of subject merchandise to home-market sales: (1) steel type, (2) galvanized coating, (3) whether the merchandise was painted or primed, (4) outside perimeter, (5) wall thickness, (6) shape, and (7) finish. The Department requested that respondents identify the ASTM specification and grade for the product sold in each transaction, but did not include grade as a matching criterion. Galvak/Hylsa believes that the omission of grade as a product-matching criterion led the Department to "lump together products that differ in component materials, uses and commercial value." See Galvak/Hylsa's Case Brief at 7.

Galvak/Hylsa states that the relevant ASTM grades reflect basic differences in the physical characteristics of the products, such as yield strength, tensile strength, and resistance to elongation of the ASTM A-500 LWRPT. Galvak/Hylsa explains that in order to achieve the required characteristics, different qualities of steel coil must be used in the production of each grade. They present the following table to summarize the differences:

ASTM A-500 Sub-Grade	Steel Used	Yield Strength	Tensile Strength	Elongation
A	SAE 1008 (6081)	39 ksi	45 ksi	25%
B	API 5L B (6163)	46 ksi	58 ksi	23%
C	API 5L B (6193)	50 ksi	62 ksi	21%

Galvak/Hylsa also asserts that the different physical characteristics relate to differences in the applications in which they are used: Grade A products are typically used in applications requiring relatively little strength, such as ornamental applications, furniture, racks, fences, and handrails. Grade B products are typically used in applications requiring a higher degree of strength, such as structural and other construction applications. And, Grade C products are typically used in applications requiring even greater strength, such as heavy structures and industrial and automotive applications.

Galvak/Hylsa points out that LWRPT produced to the ASTM A-513 standards also differs from LWRPT produced to the A-787 standards because the A-513 product is not galvanized, while the A-787 product is galvanized. In addition, the A-787 and A-513 products differ from LWRPT produced to the A-500 standards. The A-513 products can only be used in lower-strength applications, because the ASTM A-513 and A-787 specifications do not establish requirements for tensile strength, yield strength and resistance to elongation. Also, the A-513 and A-787 products are used in applications requiring more precise dimensions, because the tolerances for the diameter and wall thickness under the ASTM A-513 and A-787 standards are narrower than the tolerances under the ASTM A-500 standards. The ASTM A-513 and A-787 products must also meet requirements for chemical composition and straightness that are more stringent than the requirements under ASTM A-500. And, the ASTM A-513 and A-787 products must meet requirements for flash

conditions (*i.e.*, the residue at the weld line) and cut squareness (*i.e.*, the perpendicularity of the end surface to the longitudinal axis of the pipe) that are not required under the ASTM A-500 standards.

According to Galvak/Hylsa, these differences in physical characteristics and uses affect the price of the product. Galvak/Hylsa presents a table which shows differences between its average prices for the sales of each grade during the investigation period, and states that the differences between these prices clearly demonstrate a correlation between grade and commercial value. Galvak/Hylsa's conclusion is that because the grades reflect real differences in physical characteristics, uses and commercial value, the Department should include grade in the product-matching criteria.

Petitioners state that the Department properly excluded grade as a matching criterion after receiving comments from interested parties. Petitioners further assert that the Department has broad discretion "to choose the manner in which 'such or similar' merchandise shall be selected," citing Koyo Seiko Co. v. United States, 66 F. 3d 1204, 1209 (Fed. Cir. 1995), and that the exclusion of steel grade falls well within the Department's discretion. Petitioners also cite United Engineering & Forging v. United States, 770 F. Supp. 1375 (CIT 1991), where the CIT reiterated its position that:

> It is of particular importance that the administering agency itself make the required determination of what constitutes most similar merchandise.... It is the administering agency rather than an interested party that should make the determination as to what "similar" characteristics are of the most significance. Additionally, it is hard to imagine that a foreign manufacturer, given the opportunity of selecting what constitutes similar merchandise, and assuming that there exists more than one product from which a choice can be made, would not make the choice of merchandise most advantageous to itself.

In response to Galvak/Hylsa's claim that "the omission of grade as a product-matching criterion led the Department to lump together products that differ in component material uses and commercial value," petitioners counter that the major differences in materials, uses, and commercial value are accounted for by the Department's designation of "Steel Type" as the first of the matching criteria. See Memorandum from Maisha Cryor to Paige Rivas, Revisions to Product Characteristics and Extension for Submitting Sections B-E of the Antidumping Questionnaire, Light Walled Rectangular Pipe and Tube from Mexico and Turkey, November 24, 2004, at 2.

Petitioners continue that even if grade does reflect physical differences, there is no requirement that the Department consider it as a matching criterion. In support of this assertion, petitioners note that the Department has stated that it "need not account for every conceivable physical characteristic of a product in its hierarchy" and that its process of determining matching criteria involves "draw{ing} reasonable distinctions between products for matching purposes without attempting to account for every possible difference inherent in certain classes or kinds of merchandise." See Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from Germany, 60 FR 65264, 65271 (December 19, 1995).

Finally, petitioners state that grade does not identify physical characteristics, but is established through inspection and testing. This may result in products being physically identical, but having different grades because one product was tested while the other was not. Petitioners believe that for this reason, grade is as much a function of testing as it is a function of the physical characteristics of a product. Furthermore, a product may meet various country, industry, or company-specific grades. Physically identical products may, therefore, have different grade specification. For these reasons, steel grade is not a suitable criterion for matching products in the this investigation.

Department's Position:

On October 28, 2003, the Department issued sections A-E of its antidumping questionnaire to respondents, which included proposed product characteristics that the Department intended to use to make its fair value comparisons. After setting aside a period of time for all interested parties to provide comments on the proposed product characteristics, the Department received comments from Galvak/Hylsa and petitioners on November 4, 2003, and from Prolamsa on November 5, 2003. On November 10, 2003, Galvak/Hylsa, LM, and petitioners submitted rebuttal comments.

After reviewing interested parties' comments, the Department revised the proposed product characteristics and instructed Prolamsa, Galvak/Hylsa, LM, and Regiomontana to report their product characteristics according to the revised requirements for sections B and C of the Department's questionnaire. See Memorandum from Maisha Cryor, Analyst, to the File, RE: Revision to Product Characteristics, dated November 21, 2003. These criteria, in order of importance are: (1) steel type, (2) galvanized coating, (3) whether the merchandise was painted or primed, (4) outside perimeter, (5) wall thickness, (6) shape, and (7) finish.

When choosing the above criteria in defining the product characteristics of LWRPT, the Department included the factors that we consider the most essential for accurate product matching, after taking all submitted comments into account. Regarding Galvak/Hylsa's argument that the omission of grade as a product-matching criterion led the Department to "lump together products that differ in component materials, uses and commercial value," we note that when choosing steel type rather than grade as a product matching characteristic, we took into account the position of petitioners as well as other respondents to this investigation, such as LM, which stated, "LM agrees with comments submitted by counsel for petitioners that the type of steel used is more specific than the Department's proposed ASTM standards." LM's proposed revised product characteristics did not include product grade, as originally proposed by the Department, and stated that the "Department's proposed hierarchy (which included grade) would result in faulty product matches..." See LM's Letter RE: Investigation on Light-Walled Rectangular Pipe and Tube from Mexico, Comments re Matching Criteria, dated November 10, 2003.

In addition, comments from Prolamsa stated that the original proposed matching criteria, which included grade, did not account for "far more fundamental differences in the type and grade of steel

used to produce the LWR(P)T." While Prolamsa did not suggest removing grade as a matching criterion, it did suggest that steel type should be the most important matching characteristic. According to Prolamsa, "direct material costs vary greatly based on which type of steel is used. These cost differences result in significant differences in sales prices." See Prolamsa's Letter RE: Light-Walled Rectangular Pipe & Tube from Mexico, dated November 5, 2003.

As noted above, when choosing the criteria in defining the product characteristics of LWRPT, the Department included the most essential factors for accurate product matching. Although Galvak/Hylsa points out that there may be differences in physical characteristics between the different grades of subject merchandise, the product matching characteristics set up by the Department "need not account for every conceivable physical characteristic of a product in its hierarchy" and the process of determining matching criteria involves "draw{ing} reasonable distinctions between products for matching purposes without attempting to account for every possible difference inherent in certain classes or kinds of merchandise." See Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from Germany, 60 FR 65264, 65271, (December 19, 1995). Furthermore, the Department notes that one of the key differences between LWRPT produced to the ASTM A-513 and A-787 standards, pointed out by Galvak/Hylsa, is whether the product is galvanized. The Department takes this distinction into account in the second product matching criterion, galvanized coating.

Regarding Galvak/Hylsa's argument that its average prices for the different specifications are significantly different, the Department notes that the prices of Galvak/Hylsa's sales are precisely what is under investigation by the Department. Because of that fact, the Department cannot consider Galvak/Hylsa's pricing to define the product matching characteristics used in this investigation. As noted by the CIT in United Engineering & Forging v. United States, 779 F. Supp. 1375 (CIT 1991),

> It is the administering agency rather than an interested party that should make the determination as to what "similar" characteristics are of the most significance. Additionally, it is hard to imagine that a foreign manufacturer, given the opportunity of selecting what constitutes similar merchandise...would not make the choice of merchandise most advantageous to itself.

In summary, the Department took all submitted comments into account when defining the product matching characteristics, and included the most essential factors for accurate product matching. In this case, the Department does not believe that grade is an essential factor to identify matching products, and, therefore, we will not amend the product matching criteria for the final determination.

Comment 14: **Whether the Department Should Revise its Preliminary Level-of-Trade Analysis**

In the Preliminary Determination, Galvak/Hylsa requested a level-of-trade adjustment.[14] Pursuant to that request, the Department performed a level-of-trade analysis (see Memorandum from Maisha Cryor to Thomas Futtner RE: Level of Trade Analysis (April 6, 2004) (LOT Memo), and denied a level-of-trade adjustment in this case. Galvak/Hylsa is now requesting that the Department revise that analysis to include a level-of-trade adjustment based on its network of distribution warehouses in Mexico, which allow it to meet customer requirements for smaller orders involving short delivery lead times. It argues that shipments through these warehouses involve the "significant" additional selling function of storing the merchandise near the customer's location for prompt delivery, which is not required for the direct shipments from the plant to the customer. Galvak/Hylsa also points out that shipments made through the distribution warehouses generally involve significantly smaller quantities. Galvak/Hylsa believes that the Department's preliminary level-of-trade analysis failed to adequately address the impact of inventory maintenance at the distribution warehouses on the sales activities performed.

Galvak/Hylsa also states that the Department has long recognized that the selling activities relating to sales from inventory are quite different from the selling activities relating to direct shipments. In past cases, the Department gave the following explanation of the types of additional activities required by inventory sales:

> {W}here the merchandise is ordinarily diverted into inventory ...{t}he Department regards this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing.

See Preliminary Results of Antidumping Duty Administrative Review: Titanium Sponge from Japan, 53 FR 26099 (July 11, 1988)(no change in the final results); see also Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan, 52 FR 34973 (Sep. 16, 1987)(no change in the final results).

Galvak/Hylsa points out that in order to make sales from inventory held at distribution warehouses, the distribution warehouses have to be set up, staffed and operated. In addition, an investment must be made in the inventory needed to stock each warehouse in order to meet customer requirements for short delivery times. And, in order to ensure that the investment in inventory is adequate but not excessive, more precise sales forecasting is needed for the sales through the distribution warehouses, resulting in a higher level of sales forecasting activity. For these reasons, it maintains that the Department has previously considered inventory maintenance to be an important

[14]See Galvak's Section B and C questionnaire response, dated December 31, 2003, at 28; see also Hylsa's Section B and C questionnaire response, dated December 31, 2003 at 28.

factor in identifying the level of trade. See Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle from Japan, 63 FR 63671, 63682 (Nov. 16, 1998); see also Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 63 FR 35190, 35193 (June 29, 1998).

Galvak/Hylsa believes that the home-market sales through the distribution warehouses constitute a distinct level of trade. Because the level of trade for the direct shipment U.S. sales by Galvak and Hylsa corresponds most closely to the level of trade for home-market direct shipment sales, based on section 771(a)(1)(B)(i) of the Act, it urges the Department to consider only the home-market direct shipment sales in calculating NV for purposes of its final determination.

Petitioners assert that the impact on the overall sales activities performed from inventory maintenance at the distribution warehouses is minimal. Hylsa stated that it "stored a small quantity of LWRPT at Galvak's distribution warehouse...," and based on Galvak/Hylsa's costs involved in warehousing subject merchandise, this factor should not affect the level-of- trade analysis.

Petitioners argue that Galvak/Hylsa's case brief only identifies the activities related to warehousing as grounds for finding a difference in level of trade. Thus, home market channels of distribution are not distinguished by other meaningful differences in selling activities or functions. According to petitioners, differences in warehousing activities alone fail to establish entitlement to a level-of-trade adjustment. Petitioners contend that the Department previously found that "warehousing differences in and of themselves are insufficient to differentiate the sales by the service centers...as separate levels of trade given the similar selling functions." See Issues and Decision Memorandum: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, 66 FR 50408 (October 3, 2001).

Petitioners also cite to a case where the Department stated that "{w}hile these inventory-related functions pertaining to export sales and to merchandise generally are not particularly significant, neither is that described by Saarstahl for its channel 2 home market sales, and on balance it is evident that there is no basis for differentiating levels of trade based on such minimal functions." See Issues and Decision Memorandum: Notice of Final Determination of Sales at Less than Fair Value Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 55802 (August 30, 2002).

Department's Position:

Galvak/Hylsa has failed to establish entitlement to a level-of-trade adjustment. Galvak/Hylsa states that the Department's original analysis (see LOT Memo) "failed to address the impact of inventory maintenance at the distribution warehouses on the sales activity performed." However, the Department was aware of, and did address inventory maintenance differences when making our level-of-trade determination. Inventory maintenance is included on page 3 in the chart entitled "Selling Activities in the Home Market." See LOT Memo. In our discussion of this chart, although we did not explicitly mention inventory maintenance, it was considered as one "{o}f the remaining selling functions,

(where) the level of activity differed only slightly." In addition, inventory maintenance in the home market is further addressed in the following passage from page 5 of the LOT Memo:

> We compared the U.S. market LOT (*i.e.*, EP sales) to the HM LOT and found that, of the fifteen selling functions reported in both markets, six selling functions are provided at identical levels of activity between the two LOTs (*i.e.*, advertising, packing, market research, warranty, guarantees and freight); eight selling functions are provided at different levels of activity between the two LOTs (*i.e.*, sales forecasting, personnel training, sales promotion, inventory maintenance, order input/processing, direct sales personnel contact, sales/marketing support, early payment discounts) and one selling function is provided in one LOT but not the other (*i.e.*, commissions). Of the eight selling functions provided at different levels of activity, sales promotion, order input/processing, direct sales personnel contact and sales support are provided at slightly higher levels of activity in the HM LOT, while sales forecasting, personnel training and inventory maintenance are provided at moderately higher levels of activity in the HM LOT.

In its case brief, Galvak/Hylsa points out that the shipment of merchandise through its network of distribution warehouses involves additional selling functions such as storing the merchandise; sales forecasting; and setting up, staffing, and operating the warehouses. However, in this case, these functions are not sufficient to establish the existence of different levels of trade. For example, the sales forecasting used by Galvak/Hylsa at the warehouses consists mainly of "sometimes contact(ing) the commercial clients to determine what their future merchandise needs will be." See Memorandum from Ronald Trentham and Richard Johns to Tom Futtner regarding Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico, RE: Sales Verification of the Response of Galvak, S.A. de C.V. at 8 (Galvak Verification Report). And, according to Hylsa sales personnel, its sales forecasting for warehouse sales is comprised of "sales personnel at Hylsa (talking) to Galvak personnel at the warehouses to determine the inventory levels." See Memorandum from Ronald Trentham and Richard Johns to Tom Futtner regarding Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico, RE: Sales Verification of the Response of Hylsa, S.A. de C.V. at 6 (Hylsa Verification Report). In addition, Hylsa officials stated that its customers usually go to the warehouse to pick up the merchandise. See Hylsa Verification Report at 6. Based on these actions, and other evidence on the record, it does not appear that a significantly higher level of inventory maintenance or selling activities occurs in the warehouse sales as opposed to the direct sales that would justify a level-of-trade adjustment.

In addition, as noted by petitioners, the impact on the overall sales activities performed from inventory maintenance at the distribution warehouses seems to be minimal. Hylsa officials explained that for warehouse sales, it typically stores small amounts of inventory in Galvak's warehouses to sell to small buyers, and only a small percent of Hylsa's home market sales go through Galvak's warehouses. See Hylsa Verification Report. Although Galvak may have a larger percentage of sales through its warehouses, the Department notes that the overall quantity of Galvak/Hylsa combined sales is still a

small percentage of the total sales quantity.

As noted by the respondent, the Department has considered selling activities relating to sales from inventory as distinct from selling activities related to direct shipments. However, whether different levels of trade exist, and whether a level-of-trade adjustment is appropriate, must be evaluated on a case-by-case basis. According to section 351.412(c)(2) of the Department's regulations and Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27371 (May 19, 1997), the Department will determine that sales are made at different levels of trade if they are made at different marketing stages, and that substantial differences in selling functions are a necessary condition for determining that there is a difference in the stage of marketing. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, 66 FR 50408 (October 3, 2001). In this case, the respondent has not shown that the differences in selling activities are significant enough to establish two levels of trade. As noted in the LOT Memo, "{a}lthough Galvak/Hylsa performed certain selling functions at varying degrees, overall, we find that the performance of these selling functions is sufficiently similar across customer types and the reported channels of distribution (*e.g.*, sales forecasting, sales promotion, sales/marketing support and freight delivery and service) and conclude that any variations are not substantial when the selling functions are considered as a whole..." No additional information has been presented or discovered during verification that warrants a change to the Department's preliminary determination. Thus, the Department continues to find that Galvak/Hylsa's HM sales constitute one level-of-trade.

Comment 15: **Whether the Department Should Correct Minor Errors in its Preliminary Margin Calculation Program and in Data Submitted by Galvak and Hylsa**

Galvak/Hylsa note that there were two minor errors in the preliminary margin calculation program, and that the Department stated that these errors should be corrected in the final determination. See Memorandum from Maisha Cryor and Richard Johns to Thomas Futtner, RE: Analysis of Ministerial Error Allegations, dated May 12, 2004. The errors pointed out by Galvak/Hylsa are listed below:

- In the price-to-price comparisons, the margin calculation program incorrectly converted U.S. dollar amounts into Mexican pesos using the exchange rate on the date of the home-market sale. This conversion was made incorrectly because the program multiplied the U.S. dollar amounts by the dollar-to-peso exchange rate instead of dividing them by the exchange rate. The program then converted the calculated peso amounts back into dollars using the weighted-average exchange rate based on the date of the U.S. sales.

- The margin calculation program failed to convert home-market sales prices that were denominated in U.S. dollars into Mexican pesos for purposes of determining whether those sales were made at below-cost prices. Instead, the preliminary program simply compared the U.S. dollar prices to the Mexican peso costs.

Galvak/Hylsa also notes that the Department should correct the minor errors in the data submitted by Galvak and Hylsa that were disclosed at verification.

Petitioners did not comment on this issue.

Department's Position:

The Department agrees with Galvak/Hylsa. The Department has corrected the margin calculation programming errors noted above in the margin calculations for the final determination. The Department also requested revisions to the sales and cost databases to correct errors in the data submitted by Galvak and Hylsa that were disclosed at verification. See Letter from Mark Manning, Acting Program Manager to Galvak/Hylsa, dated July 26, 2004. The revised databases were submitted to the Department on August 5, 2004 (see Letter from Galvak/Hylsa to the Department, dated August 5, 2004), and have been used in the margin calculations for the final determination.

Regiomontana

Comment 16: **Whether to Calculate Normal Value and Export Price Based on an Actual or Theoretical Basis**

Regiomontana argues that the Department should use the same weight basis for NV and EP comparison to calculate its dumping margin for the final determination. Regiomontana asserts that according to section 773(a) of the Act, U.S. Steel Group v. United States, 23 ITRD 2243, 177 F. Supp. 2d at 1325,1328 (CIT 2001), and E.I. DuPont de Nemours & Co. v. Untied States, 17 C.I.T 1266, 841 F. Supp. 1237, 1274 (1993), the Department is required to compare NV and EP on a "fair" basis and more specifically, that "a fair comparison shall be made between the export price or constructed export price and NV." Citing numerous cases, *e.g.* Certain Cut-to-Length Carbon Steel Plate from South Africa,[15] Regiomontana contends that, based on this principle of fair comparison, the Department is required to make all price comparisons using the same weight-basis and, in cases where sales in the home market are made on a different weight-basis from the U.S. market, the Department must convert all quantities to the same weight-basis using conversion factors supplied by respondents before making a fair-value comparison. See Regiomontana's Case Brief at 3.

Regiomontana contends that it is normal U.S. steel industry practice to sell in the U.S. market on a theoretical weight-basis. For this reason, Regiomontana states that it sells to its U.S. customers on a theoretical weight-basis, even though it sells to its home market customers on an actual weight-basis. Regiomontana notes that selling to the home market and the U.S. market on a different weight-basis is

[15]Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,62 FR 61731, 61739 (November 19, 1997).

not uncommon and cites to the Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329 (May 6, 1999), which states, "{i}n recognition of steel industry practices, the Department routinely requests respondents in proceedings involving steel to provide either the actual and theoretical weights of the transactions in both markets, or in the alternative, to provide conversion factors to ensure apples to apples comparisons on the same weight-basis." To this end, Regiomontana argues that, in order to compare NV and EP on the same-weight basis, the Department should revise its preliminary calculation by calculating NV and EP on an actual weight-basis, such as it did in the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 61249 (Nov. 10, 1999), where the Department states that sales reported on a theoretical-weight-basis should be converted to an actual-weight-basis for "proper comparison." Specifically, Regiomontana asserts that the Department should compare the transactions in the U.S. market and in the home market by converting the reported theoretical weights to actual weights, so that the Department will be making an "apples to apples" comparison as the CIT upheld in Nippon Steel Corp. v. United States, 23 ITRD 2340, 2001 WL 1662075 at 1 (CIT, December 27, 2001), 337 F.3d 1373 (Fed Cir. 2003) (Nippon Steel) and in Persico Pizzamiglio, S.A. v. Untied States, 18 C.I.T. 299, 302 (1994)(Perisco). Citing Persico, Regiomontana argues that conversion is necessary in the present case because, since it sells pipe in the home market on an actual weight basis, while it sells pipe in the United States on a theoretical weight basis, conversion will enable the Department to compare home market prices with U.S. market prices. See Regiomontana's Case Brief at 5.

Regiomontana asserts that the Department should not simply compare Regiomontana's home market sales data to its U.S. sales data, as reported, because these two quantities are different, thereby creating an "informational gap" that will not allow the Department to make a proper comparison. See Regiomontana's Case Brief at 6. Regiomontana notes that the Department issued a supplemental questionnaire on March 16, 2004, that focused exclusively on actual and theoretical weights, and conversion factors. Specifically, Regiomontana asserts that the Department asked Regiomontana to modify its databases by adding new fields to report both home market and U.S. market sales quantities on an actual weight-basis. Regiomontana further asserts that the Department also requested Regiomontana to provide conversion factors for computing actual weights from any theoretical weights and to provide an explanation on how the conversion factors were calculated. Contending that even though it responded timely to the Department's March 16, 2004, supplemental questionnaire, Regiomontana argues that the Department still computed Regiomontana's dumping margin in the preliminary determination by comparing the reported home market and U.S. sales data on different weight bases.

Regiomontana specifically asserts that the Department should convert all U.S. price values, including variable and total cost of manufactures and inventory carrying costs (VCOMU/TCOMU/DINVCARU) to an actual-weight-basis, and to use the actual sales quantity field, ACTQTYU. In the home market sales file, Regiomontana states that the variable cost of manufacture

and the inventory carrying cost (VCOMH/INVCARH) should be converted to an actual weight-basis, and that the actual weight-basis sales quantity field, ACTQTYH should be used. Additionally, Regiomontana states that the Department should also use the actual weight-basis cost file instead of the theoretical weight-basis cost file. Therefore, Regiomontana argues that for the final determination, the Department should correct its preliminary margin calculation by "using data reported on the same weight-basis. And further urges the Department to use actual weight as the same weight basis.

Petitioners did not comment on this issue.

Department's Position:

We agree that where sales in the home market are made on a different weight-basis from U.S. market sales, the Department should convert all quantities to the same weight-basis before making a fair-value comparison. However, we note that in the Preliminary Determination, contrary to Regiomontana's arguments, the Department calculated NV and EP on the same weight basis, *i.e.*, theoretical weight. See Regiomontana's Preliminary Calculation Memorandum , dated April 6, 2004. Further, we note that the Department also used Regiomontana's theoretical weight-basis cost file in its preliminary calculations. Id.

Regiomontana reported its home market sales on an actual weight-basis and its U.S. sales on a theoretical weight-basis. Additionally, Regiomontana reported its cost of production on a theoretical weight-basis. On March 16, 2004, the Department requested additional information in order to make a fair-value comparison on a same weight-basis. Regiomontana provided a timely response on March 23, 2004. For the Preliminary Determination, to make a comparison of the same-weight basis, we converted Regiomontana's home market sales quantities to a theoretical weight-basis to compare with the reported U.S. sales and the COP data, both reported on a theoretical weight-basis. We continue to find this action appropriate because, since both the COP and U.S. sales data were reported on a theoretical basis, converting home market sales data to a theoretical weight basis maintains consistency. Thus, in the Preliminary Determination, the Department did convert all quantities to the same weight-basis and calculated NV and EP based on a theoretical weight-basis. Moreover, we note that the cases cited by Regiomontana in support of its arguments simply state a preference for comparing EP and NV on a consistent weight basis. These cases do not state that the Department must use actual weight in lieu of theoretical weight. Therefore, since, in the Preliminary Determination, we calculated Regiomontana's dumping margin using a consistent weight basis in both the home and U.S. markets, and since Regiomontana has not proffered a reason to explain its preference for actual-weight basis versus theoretical weight basis, the Department will continue to calculate Regiomontana's dumping margin by comparing NV and EP on a consistent basis, *i.e.*, theoretical weight, in the final determination.

The Department notes that it in the Preliminary Determination, it did not convert all calculating factors reported for home market sales, such as gross unit price, expenses, and adjustments to a

theoretical weight-basis. Therefore, for the final determination, we converted all appropriate factors to a theoretical weight-basis and continued to calculate NV and EP based on a theoretical weight-basis. See Regiomontana's Final Determination Analysis Memorandum, dated August 26, 2004.

Comment 17: **Whether the Department Correctly Calculated the Reconciliation of Regiomontana's Home Market Sales in Regiomontana's Sales Verification Report**

Regiomontana notes that in the Department's Sales Verification Memorandum, the Department miscalculated the difference between the reported total home market sales value and the total home market sales value adjusted for sales of secondary merchandise and cancelled sales which was reconciled to Regiomontana's accounting records. Therefore, Regiomontana requests that for the final determination, the Department use the correct difference between the reported total sales value and the total reconciled sales value.

Petitioners did not comment on this issue.

Department's Position:

We agree with Regiomontana, in part. The Department did not miscalculate the difference between the reported total home market sales value and the reconciled total home market sales value. The Department notes that a typographical error in Regiomontana's verification report caused the difference between the total reported home market sales and the reconciled home market sales value to appear to be miscalculated. However, by subtracting the reconciled total home market sales value from the correct total reported home market sales value, the difference is correctly noted in Regiomontana's verification report. We cannot address certain aspects of the respondent's arguments without referencing business proprietary information. Therefore, we have addressed these aspects of its arguments in the Proprietary Memorandum.

Comment 18: **Whether the Department Should Classify the Sales Made Through the U.S. Commissioned Selling Agents as CEP Transactions**

Petitioners state that because Regiomontana's U.S. sales were classified as EP transactions and the statute does not permit the deduction of commission expenses incurred in the United States when sales are classified as EP sales as it does for sales classified as CEP sales, the commissions Regiomontana paid to the U.S. selling agents were not deducted from the EP.

Petitioners assert that even though Regiomontana's U.S. sales to the first unaffiliated purchaser in the United States may have been made prior to importation, the Department does not require that Regiomontana's U.S. sales be categorized as EP transactions. Specifically, petitioners cite section 772 of the Act that states "the term {constructed export price} means the price at which the subject

merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer," to emphasize that sales made before the date of importation may be classified as CEP transactions.

Petitioners again cite section 772 of the Act that states that CEP sales may be "sold by...the producer" and contends that only the CEP provision of the Act allows for sales made "for the account of the producer" in the United States. Thus, petitioners argue that sales by Regiomontana's commissioned selling agents were made "for the account of Regiomontana," the producer, and that sales made "for the account of the producer should be classified as CEP transactions." Petitioners further argue similar to the Department's decision in Certain Malleable Iron Pipe Fittings from the People's Republic of China, where the Department found that sales by the U.S. commissioned selling agent did not meet the statutory definition of CEP because the selling agent did not take title to the producer's subject merchandise, Regiomontana's U.S. selling agents could not sell the subject merchandise "on its own account because it did not purchase the subject merchandise, and without first obtaining title it cannot transfer title." See Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003) (Malleable Pipe from China) and accompanying Issues and Decision memorandum at comment 15. However, petitioners argue that although the Department addressed sales "by the producer" in Malleable Pipe from China, it did not make a decision on sales made "for the account of the producer" and further argues that the phrase "for the account of" refers to a principal and agency relationship, but does not require that the agent take title to the subject merchandise.

Petitioners assert that in Malleable Pipe from China, the Department recognized that the phrase "for the account of the producer or exporter" refers to consignment sales where selling agents do not take title to the subject merchandise. Specifically, petitioners note that in Malleable Pipe from China, the Department states, "for the account of the producer or exporter, in section 772(b) of the Tariff Act, refers to consignment sales." Petitioners also cite to Fresh Atlantic Salmon From Chile, where the Department assigned U.S. sales that were made through unaffiliated consignment brokers for the account of the producer/exporter as CEP sales and deducted from the CEP commissions charged to the producer/exporter. See Final Results of Antidumping Duty Review: Fresh Atlantic Salmon From Chile, 54 FR 48457, 48460 (August 8, 2000). Further, petitioners argue that the CIT affirmed that in a consignment transaction, the consignee does not take title to the merchandise and therefore has nothing to sell for its own account as it did in Floral Trade Council v. United States, 41 F. Supp. 2d 319, 335 (CIT 1999). Thus, petitioners conclude that a U.S. selling agent can sell subject merchandise for the account of the producer even if does not take title to the merchandise.

Petitioners argue that the Federal Circuit's definition of the term "sale," in section 772(b) of the Act, as defined in AK Steel and NSK v. United States, 115 F. 3d 965, 974-975 (Fed. Cir. 1997) (NSK) supports petitioners assertion that the U.S. agent sold the subject merchandise for the account of the producer Regiomontana. Specifically, petitioners claim that NSK defined a sale as an "act of

selling" and "a contract whereby the absolute, or general, ownership of property is transferred from one person to another for a price, or sum of money, or loosely, for any consideration. Similarly, petitioners assert that in AK Steel where the "U.S. selling affiliate of the producer contracted with the first unaffiliated purchaser in the United States," affirmed that the "seller referred to in the CEP definition is simply one who contracts to sell, and {sold} refers to the transfer of ownership or title." Thus, petitioners argue that the Federal Circuit's definition of "sale" in NSK and AK Steel indicates that an agent does not need title to sell the subject merchandise for the account of the producer and that in the present case, the U.S. agent sold the subject merchandise for the account of the producer, Regiomontana. See Petitioners' Case Brief at 37-38.

Additionally, petitioners argue that the relationship of the seller, *i.e.*, the agent, to Regiomontana indicates that the sales at issue in the present case must be classified as CEP transactions. Citing AK Steel where the Court, referring to section 772(a) of the Act states, "{c}onsequently, while a sale made by a producer or exporter could be either EP or CEP, one made by a U.S. affiliate can only be CEP," petitioners argue that "the language of the statute indicates that, unlike EP sales, CEP sales may be 'for the account of the producer or exporter' or 'by a seller affiliated with the producer or seller.'" Petitioners further argue that similar to AK Steel, which involved sales by the U.S. affiliate of the producer, the present case involves sales by the U.S. agent of the producer "for the account of" the producer. See Petitioners' Case Brief at 38. Petitioners assert that the language of the statute dictating CEP sales is clear and because Regiomontana's U.S. sales made by a sales agent were made "for the account of" the producer, the Department must classify these sales as CEP sales.

Petitioners also argue that since Regiomontana's U.S. sales made through the U.S. sales agents involved sales activity that took place in the United States, the sales must be classified as CEP transactions. Petitioners emphasize the importance of selling activity in the United states as a distinguishing factor between EP and CEP. Petitioners specifically note that in AK Steel which cites to sections 772(a) and 772(b) of the Act, classifying sales as either EP or CEP is described as "the price at which the subject merchandise is first sold in the United States...in contrast, EP is defined as the price at which the merchandise is first sold outside the United States...thus, the location of the sale appears to be critical to the distinction between the two categories." Further, petitioners argue that this definition is supported by the SAA where the statutory adjustments to EP and CEP, based on whether or not the sales activity occurs in the United States, are denoted. Petitioners stress that "the only difference between EP and CEP sales in calculating antidumping margins is that certain additional adjustments are made for CEP sales that are not made for EP sales" including adjustments for commissions for selling the subject merchandise in the United States. See section 772(d) of the Act.

Petitioners assert that the Department's interpretation of section 772(b) of the Act, (*i.e.*, that sales by commissioned U.S. selling agents for the account of Regiomontana are not CEP sales) conflicts with section 772(d) of the Act which requires that the Department deduct commission expenses from the CEP. Petitioners further argue that numerous court decisions require that the statute be interpreted so that separate provisions of the statute are not inconsistent with one another. Specifically, petitioners cite

the Supreme Court's decision in Chevron v. United States, 467 U.S. 837, 843. (S.Ct. 1984) (Chevron) which states that "the judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent.... If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect." Petitioners conclude that the Department incorrectly interpreted section 772(b) of the Act given the requirements of section 772(d) of the Act and the fact "that Congress intended that all sales involving the expenses enumerated in {section} 1677(a)(d) {of the statute} to be classified as CEP sales in order to allow for the deduction of these expenses."

Citing AK Steel, where the Federal Circuit explains that "the purpose of these additional deductions in the CEP methodology is to prevent foreign producers from competing unfairly in the United States market by inflating the U.S. price with amounts spent by the U.S. affiliate on marketing and selling the products in the United States," petitioners assert that the purpose of CEP adjustments requires that the Department deduct the commissions Regiomontana paid to U.S. sales agents from the CEP. Petitioners argue that in order for a sale to be made by a commissioned agent that incurs expenses such as travel, office, phone on behalf of the sale made, Regiomontana must compensate the agent by paying a commission which must be reflected in the price of the sales to the customer. Petitioners further argue that "by failing to deduct the commission expense, the Department allows Regiomontana to compete unfairly in the United States market" by not accounting for expenses Regiomontana incurred to sell its products and calculating an antidumping margin without deducting these costs from the starting price. Therefore, petitioners assert that the Department must deduct the commissions incurred and paid by Regiomontana in accordance with the objectives of the statute.

Petitioners contend that it is necessary for the Department to deduct commissions from the starting U.S. price to comply with the intent of the SAA and the legislative history of the 1921 Antidumping Act. Specifically, petitioners point to the SAA where it states that "constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers." See SAA at 823. Petitioners further cite to Brother Industries, Ltd. v. United States, 540 F. Supp 1342, 1357 (CIT 1982) (Brother) where the CIT similarly agreed that:

> The rationale for the adjustment for commissions and selling expenses was described in the Senate Finance Committee Report No. 16, 67th Cong., 1st Sess. At 12 (1921) as follows: In substance, the term "exporter's sales price" {*i.e.*, constructed export price} is defined in such manner as to make the price the net amount returned to the foreign exporter... By stripping all of the selling expenses incurred in the United States from the exporter's sales price, Congress made it plain that it did not want a comparison between a price in the home market and a price in the United States market (which price would then properly reflect all selling expenses incurred), but rather between a price in the home market and a price for export to the United States.

Petitioners conclude that the SAA and the legislative history of the 1921 Act require that the U.S. price

on which antidumping margins are calculated reflects a net price corresponding as closely as possible to an export price between an unaffiliated exporter and importer.

Because the Federal Circuit has previously rejected the Department's argument that CEP sales are distinguished from EP sales based on the party that set the terms of the sales, petitioners assert that the Department was incorrect to assign Regiomontana's sales through its sales agents as EP sales based on the premise that it was Regiomontana that sold subject merchandise to an unaffiliated U.S. customer prior to importation. Petitioners note that in Malleable Pipe from China, the Department stated there were no invoices from the agent to the U.S. customer and no evidence that the agent negotiated the sale terms. Petitioners argue, however, that in AK Steel, the Federal Circuit specifically rejected the argument that CEP sales are distinguished from EP sales based on which party set the terms of sale. Petitioners assert that Regiomontana's U.S. selling agent sold the subject merchandise for the account of the producer for which it was paid a commission. Petitioners claim that this satisfies the requirements of the statute for classifying the sales at issue as CEP transactions and therefore, the Department should deduct the commission on these sales from the constructed export price.

Regiomontana asserts that all of its sales to the United States were made directly by Regiomontana from its plant in Mexico to unaffiliated purchasers before the date of importation, and pursuant to section 772 of the Act, the Department properly classified Regiomontana's U.S. sales as EP sales. Regiomontana contends that petitioners' arguments regarding the U.S. sales made with the assistance of U.S. based sales agents be classified as CEP sales have no basis. Specifically, Regiomontana reiterates it responses, stating that these sales agents were unaffiliated and were used only to identify and contact potential customers and to collect and transmit orders to Regiomontana. Additionally, Regiomontana asserts that in their argument to the Department, petitioners misrepresent the case law in AK Steel. Regiomontana contends that current case law and section 772 of the Act, as cited by petitioners, actually require the Department to classify Regiomontana's sales as EP sales.

Contrary to petitioners' claims, Regiomontana argues that the Federal Circuit's decision in AK Steel actually explains that the objective of section 772 of the Act is to define the U.S. price in terms of arm's-length transactions and notes that the two factors that are dispositive in determining EP or CEP sales as "{1} whether the sale or transaction takes place inside or outside the United States and {2} whether it is made by an affiliate." See AK Steel at 1370. Regiomontana, citing to pages 1369-1371 of AK Steel, asserts that the Federal Circuit specifically states that the location of the sale is critical and explains that a sale that takes place outside the United States is an EP sale, while sales that take place in the United States may be a CEP sale. Further, Regiomontana argues, the Federal Circuit explains that while CEP sales can be made by both the producer/exporter and by an affiliate of the producer or exporter, EP sales can only be made by the producer or exporter of the merchandise. Regiomontana contends that the Federal Circuit's explanation is consistent with sections 772(a) and 772(b) of the Act, which state that EP sales must be made outside the United States in addition to being sold before the date of importation, while CEP sales must take place in the United States and can be made before or after the date of importation.

Regiomontana asserts that although its unaffiliated U.S. selling agents forward purchase orders to Regiomontana, all selling activities, including invoicing, shipping and collection of monies, occur outside the United States and before the date of importation. Consequently, Regiomontana argues, the transfer of the ownership/title of its goods in exchange for payment or promise to pay all occur in Mexico, and thus, all of its sales are transacted outside the United States. Additionally, Regiomontana argues, since all of its sales are made from its plant in Mexico, and merchandise is only sent to the United States after the sales transactions have been completed, all of the merchandise is sold before importation. Lastly, Regiomontana stresses that its sales agents are unaffiliated and never have possession, control or direction over Regiomontana's merchandise since Regiomontana makes all the shipping arrangements itself. Therefore, Regiomontana argues that according to the criteria of the Act and the Federal Circuit's case law for determining whether sales to the United States are EP or CEP, Regiomontana's sales can only be treated as EP sales.

Regiomontana refutes petitioners' argument that an agent does not need a transfer of ownership or title to sell subject merchandise. Regiomontana argues that petitioners again misrepresent case law when citing to both AK Steel and NSK to support the argument that a title is not needed to sell merchandise. In fact, Regiomontana argues, at page 975 of 115F. 3d in NSK, the Federal Circuit held that the term 'sold' requires both a transfer of ownership to an unrelated party and consideration and that it saw no reason to depart from the ordinary meaning of the term 'sold' or 'sale'; it does not define a sale as "a contract whereby the absolute, or general, ownership of property is transferred from one person to another for a price, or sum of money, or loosely, for any consideration" as petitioners claim. Regiomontana asserts that petitioners claim that soliciting orders constitutes an act of selling is legally unfounded since both cases petitioners cite require a transfer of ownership in a sale.

Regiomontana disputes petitioners' claims that Regiomontana's sales agents "sold the subject merchandise for the account of the producer." According to the Federal Circuit's definition of selling in AK Steel and NSK, Regiomontana argues, its sales agents could not sell anything since they did not take title of the merchandise. Moreover, Regiomontana argues that petitioners made the same arguments in Malleable Pipe - that unaffiliated U.S. sales agents made sales for the account of the producer and that soliciting of orders constituted selling, but emphasize that the Department properly rejected these arguments because the agents did not take title or ownership of the merchandise. Additionally, Regiomontana notes that in Malleable Pipe, as petitioners point out, the Department explains that the phrase, "for the account of the producer" pertains to consignment sales. Regiomontana contends that consignment sales should be considered CEP sales because the U.S. consignee must have possession of the producers' (*i.e.* the consignor's) goods when they are sold. Though the consignor is the one who transfers the title, Regiomontana asserts, the goods are sold after the date of importation which classify them as CEP sales. Therefore, Regiomontana argues that since Regiomontana retains title and possession of goods until they are transferred to the actual unaffiliated customer, its sales made through U.S. sales agents are not consignment sales.

Regiomontana argues that because commissions are not deducted from EP sales, the Departments

application of section 772(a) of the Act does not conflict with the deductions required in section 772(d) of the Act, as petitioners assert, since the deductions in subsection (d) do not apply to EP sales. Furthermore, Regiomontana contends, contrary to petitioners' assertions, the Department is not contradicting Congress' intent by classifying Regiomontana's sales through its sales agents as EP sales since it cannot deduct the sales commissions from EP sales. Rather, Regiomontana asserts, as the Federal Circuit explains at page 1373 in AK Steel, if Congress had intended the EP versus CEP distinction to be based on whether expenses denoted in section 772(d) of the Act were present, then Congress would not have written the statute to distinguish between EP and CEP based on the location of the sale and the affiliation of the parties involved in the sale.

Contrary to petitioners' claim, Regiomontana argues that the purpose of CEP adjustments do not require the deduction of commissions from Regiomontana's EP sales. Regiomontana asserts that though the purpose of deducting commissions from CEP is to calculate a price corresponding to an export price between non-affiliated exporters and importers, Regiomontana did sell directly to unaffiliated purchasers and by definition the price that the unaffiliated purchasers pay is the export price between non-affiliated exporters and importers. Thus, Regiomontana contends, no deductions should be made to this price.

Department's Position:

In the Preliminary Determination, the Department stated:

> Petitioners requested that the Department treat Regiomontana's sales made through unaffiliated U.S. commissioned selling agents as CEP sales, and deduct the commission expense from the CEP... However, because all of Regiomontana's U.S. sales were made by Regiomontana to the first unaffiliated purchaser in the United States prior to importation, in accordance with section 772(a) of the Act, we have treated all U.S. sales as EP sales. See Preliminary Determination, 69 FR at 19404.

Consistent with section 772 of the Act, we note that a sale made prior to importation could be classified as either a CEP sale or an EP sale. Additionally, we note that, as emphasized in AK Steel, when defining EP and CEP sales according to section 772 of the Act, the location of the sale is the critical factor in determining whether a sale is EP or CEP. We note that section 772 of the Act states:

> The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States...
>
> The term "constructed export price" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or

> for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter...

According to the definition of EP and CEP sales in section 772 of the Act, Regiomontana's sales to the United States made through its sales agents were properly classified as EP sales. Verification Exhibits 25 and 27 show that the U.S. customer issued the purchase order, and that the customer was identified on the commercial invoice and shipping documents. Based on the sales documentation, the Department did not find any evidence that Regiomontana sold subject merchandise to the agent or that this agent took title to the subject merchandise and, in turn, sold it to a U.S. customer. Moreover, at verification, the Department did not find an invoice from the agent to the U.S. customer, and there is no record of evidence that the agent negotiated the sales terms on behalf of Regiomontana. Finally, verification exhibits 25 and 27 show that the sale was invoiced on the date of shipment, which is prior to importation into the United States. Thus, all selling activities took place outside the United States and the sale was finalized before importation, thereby meeting the definition of an EP sale.

Consistent with Malleable Pipe from China, sales made "for the account of the producer or exporter," as defined in section 772(b) of the Tarriff Act, are CEP sales and refer to consignment sales. However, based on the facts of these transactions in the instant case, Regiomontana's sales are not consignment sales.

Therefore, for the final determination, we have not reclassified Regiomontana's U.S. sales through its sales agents as CEP sales, and accordingly, the Department has not deducted the commissions paid by Regiomontana to its sales agents for these respective sales.

LM

Comment 19: **Whether Adjustments for Inland Freight from Factory to Warehouse Should be Warranted for Shipments to Certain Warehouses**

LM argues that the Department should incorporate in the margin calculation the revisions LM made at verification with respect to the charges for inland freight from factory to certain warehouses. Specifically, LM requests that the Department set the reported freight charges to zero for the sales transactions for which the merchandise was picked up by the customer at the plant, where no freight charges from factory to the warehouse were incurred; and include freight charges from factory to warehouse for transactions for which freight charges were allegedly incurred but not reported, as shown in the list of corrections presented to the Department officials during verification.

Petitioners argue that the Department should deny any adjustments for inland freight for these warehouses because such adjustments could not be verified. Referring to the Department's verification report for LM, petitioners argued that LM failed to provide evidence that it had billed its customers. See Memorandum from Magd Zalok and Christopher Zimpo to the File: Verification of the Sales

Response of Perfiles y Herrajes LM, S.A. de C.V. in the Antidumping Investigation of Light-Walled Rectangular Pipe and Tube from Mexico (Verification Report) (July 1, 2004). Accordingly, petitioners maintain that LM's inability to document charges to the customer from its accounting or billing systems for shipments from the above-referenced warehouses constitutes a failure of verification of these freight charges. Therefore, petitioners request that the Department, for purposes of the final determination, deny any adjustments for freight to the home market transactions in question.

Department's Position:

The Department agrees that, during the verification of LM's responses, LM was unable to sufficiently document its revisions of the reported charges for freight from its factory to certain of its warehouses. The Department noted that LM revised its reported charges for inland freight to certain warehouses based merely on whether it found internally-generated delivery notes in the customer's profile. See the Verification Report at pages 9 and 10. In the Verification Report, the Department also noted that LM was unable to provide additional support for its revisions of the reported inland freight for a significant number of transactions involving the warehouses in question. Consequently, the Department was unable to verify the veracity of these revisions on a transaction-specific basis. Id. at page 10. For this reason, the Department finds LM's method of determining whether to report freight charges for these transaction, based solely on the availability of internally-generated delivery notes, to be unreliable in that LM failed to provide evidence linking such delivery notes, or lack thereof, to the actual charges incurred for inland freight. Because LM did not provide sufficient support for its revisions of the reported charges for inland freight to the warehouses in question, and given the extensive number of transactions for which revisions were made during verification, the Department did not make an adjustment to home market prices for these freight charges.

Comment 20: **Whether LM's Post Sale Warehousing Expenses Should be Treated as Movement Charges**

Petitioners request that the Department set the reported expenses for LM's warehouse at the factory in Monterrey to zero, given the fact that during verification LM confirmed that it did not incur expenses relating to that warehouse. LM does not dispute this fact, stating that the expenses incurred at the factory (the original place of shipment) are part of the indirect selling expenses that should not be used as adjustments to the home market selling prices. However, LM argues that the expenses incurred at the remote warehouses, after the subject merchandise left the original place of shipment, should be included in the adjustments for movement charges, consistent with section 773(a)(6)(B) of the Act and section 351.401(e)(2) of the Department's regulations. For this reason, LM requests that the Department revise its calculation for purposes of the final determination, treating the warehousing expenses incurred at the remote warehouses as movement expenses, deducted from the NV.

Department's Position:

We agree with both LM and petitioners. In the Verification Report, we noted that LM inadvertently reported certain expenses as warehousing expenses incurred at the factory, although these expenses are properly categorized as indirect selling expenses. See the Verification Report, page,13. Accordingly, for purposes of the final determination, we set the reported expenses for that warehouse to zero. We also agree that the warehouse expenses incurred by the remote warehouses, after the merchandise left the factory, should be treated as an adjustment to home market prices for movement charges, pursuant to section 773(a)(6)(B) of the Act and section 351.401(e)(2) of the Department's regulations. These warehousing expenses were inadvertently omitted from the Department's margin calculation in the preliminary determination. Consequently, this error was corrected in the final determination.

II. COST OF PRODUCTION

Comment 21: **Whether the Department Should Adjust Depreciation**

LM argues that increasing the total cost of manufacturing to "include the depreciation related to the revaluation of fixed assets" is incorrect. LM believes that because Mexico did not experience high inflation during the POI the Department should not include any adjustments for depreciation based on asset values indexed for inflation.

LM continues that the cost verification report makes it clear that LM's accounting and financial records accurately reflect current pricing and cost and that Mexican generally accepted accounting principles (GAAP) requires inflation adjustments only for purposes of financial statement reporting. Moreover, LM argues all adjustments to cost were calculated on the basis of unadjusted costs and, therefore, to adjust one aspect of cost, such as depreciation, without adjusting all costs and sales prices would frustrate the fundamental rule of the WTO that dumping comparisons are to be based on a "fair comparison." (See Article 2.4 of the agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994).

LM contends the adjustment to cost in the preliminary determination was particularly "perverse" because an adjustment was made to depreciation and no comparable adjustment was made to the prices used in the cost test.

LM concludes that if the Department is to make a depreciation adjustment in this case where the Mexican economy did not experience significant inflation during the POI, the Department would need to make the same adjustments in every case to avoid distortions.

Prolamsa argues that the Department should not increase the cost of manufacture for the inflation indexing of depreciation. Prolamsa asserts that if the Department includes the adjustment for depreciation then a comparable adjustment must be made to the sales prices. Prolamsa states that a comparison of indexed costs and expenses to historical sales values would result in an apples-to-

oranges comparison in which home-market sales would incorrectly appear to have been made at below cost prices.

Petitioners respond to LM and Prolamsa's arguments by stating that using depreciation calculated on the value of revalued assets is the accepted accounting practice in most countries in the world and further has been the Department's practice. Petitioners cite Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 49622 (September 28, 2001)(Flat Products from Thailand) and accompanying Issues and Decision Memorandum at Comment 1, which stated in part, "we have consistently treated increases in asset value to revaluation as an increase in the asset's depreciable base." See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30309, 30323-24 (June 14, 1996) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile, 65 FR 56613, 56621 (October 22, 1998). Petitioners note these adjustments have been made in cases where significant inflation did not exist. Petitioners continue that the revaluation of fixed assets in a respondent's books adjusts the assets to current value and thus the depreciation on the respondent's books reflects the amount by which the assets have depreciated.

Petitioners also disagree with respondent's assertions that if the Department adjusts for depreciation it must likewise include the correlative adjustment for sales prices. Petitioners contend that prices are set by market forces and reflect increases in inflation inherently since the seller wants to recoup all costs plus an element for profit in the sales price. Petitioners assert that contrary to LM's claims, adjusting depreciation to account for the revaluation of fixed assets does permit a "fair comparison" under WTO rules since the depreciation is based on the revalued assets which represents the actual cost incurred by the enterprise used in the comparison with freely set home market prices.

Department's Position:

The record shows that the depreciation on revalued assets was included in the normal books and records of respondents and is in accordance with Mexican GAAP and does not distort the reported costs. Depreciation calculated based on the revalued assets represents the current cost associated with holding these assets. Calculating depreciation on the historical values of the assets would distort the depreciation expense and therefore the costs reported because the compounded effects of inflation over the multiple years of the useful lives of the assets would understate costs. In other words, costs would be understated because depreciation would be calculated using the lower historical values of the assets instead of the inflated (*i.e.*, restated) amounts. In non-high inflation cases we do not calculate costs using a constant currency or replacement cost methodology. Instead, the Department adjusts for certain significant expenses such as depreciation which would distort the antidumping calculation were they not adjusted for inflation. The Department has followed this practice in several cases. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago,67 FR 55788 (August 30, 2002) and accompanying Issues andDecision

Memorandum at Comment 5, Flat Products from Thailand, 66 FR 49622 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 1, and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Quality Steel Plate Products from France, 64 FR 73143, 73153 (December 29, 1999). This practice has been upheld by the CIT in Cinsa S.A. de C.V. v. United States, 966 F. Supp 1230, 1234 (CIT 1997).

Section 773(f)(1)(A) of the Act states that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Thus, unless a company's normal books and records kept in accordance with home-country GAAP result in a distortion of the costs, the Department will rely on the assurances of the company's independent accountants and auditors as the basis for calculating costs. See Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 68 FR 6878 (February 11, 2003) (Fresh Atlantic Salmon from Chile) and accompanying Issues and Decision Memorandum at Comment 13; Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 65 FR 78472 (December 15, 2000)(Fresh Atlantic Salmon from Chile 2000) and accompanying Issues and Decision Memorandum at Comment 1, and Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico, 64 FR 14872, 14882 (March 29, 1999)(Rubber from Mexico). We have included depreciation calculated from the normal books and records of respondents calculated in accordance with Mexican GAAP in the calculation of COP/CV for the final determination.

Comment 22: **Whether the Department Should Account for Total Foreign Exchange Gains and Losses in Interest Expense**

Galvak and Hylsa state that they do not believe that all foreign exchange gains and losses calculated for a year should be included in the interest expense for that year. Galvak and Hylsa argue that translation foreign exchange gains and losses calculated in any one year on debts that are outstanding over a period of years do not measure how well the entity as a whole was able to manage its foreign currency exposure. Galvak and Hylsa advocate an amortization methodology for long-term foreign exchange gains and losses by bringing the relevant portion of any foreign exchange gains and losses calculated in previous years forward to the period in which the debt is repaid.

Petitioners argue that the Department should revise Galvak and Hylsa's interest expense calculation to include the entire net foreign currency exchange gains and losses instead of only an amortized portion. Petitioners cite Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004) (Silicomanganese from Brazil) and accompanying Issues and Decision Memorandum at Comment 14, for the Department's practice, which is to include the entire amount of the net foreign exchange gain or loss in the financial expense

ratio calculation.

Department's Position:

The net foreign exchange gain or loss reflects the actual gain or loss of holding foreign-denominated monetary assets and liabilities in any given year. It is the result of the company's ability to mitigate its exposure to foreign currency fluctuations through a balanced holding of monetary assets and liabilities in any given foreign currency. This balanced holding can be achieved with both current and long-term monetary assets and liabilities, as well as with foreign denominated payables, receivables, cash, or hedging contracts. This accounting treatment (*i.e.*, recognition of all exchange gains and losses in the year incurred) is not only consistent with Mexican GAAP, but also in accordance with US and International Accounting Standards. See *e.g.*, SFAS No. 52 and International Accounting Standards Nos. 21 and 39. To include only the portion associated with current assets or liabilities does not account for the entirety of the company's foreign-exchange exposure management. Our practice recognizes that in order to minimize the risk of holding foreign-denominated monetary assets and liabilities, companies often engage in a variety of activities from an enterprise-wide perspective to hedge their exposure. Therefore, companies often try to maintain a balanced holding of foreign-denominated assets and liabilities in any one currency so as to offset any foreign exchange losses with foreign exchange gains (*i.e.*, hedging its foreign currency exposure on a company-wide basis, not for specific accounts). Thus, including all of the foreign exchange gains and losses better reflects the results of the company's foreign exchange management. Additionally, respondents recognized the total foreign exchange gain or loss in their normal books and records and this treatment is in accordance with Mexican GAAP.

Section 773(f)(1)(A) of the Act states that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated wit the production and sale of the merchandise." Thus, unless a company's normal books and records kept in accordance with home-country GAAP result in a distortion of the costs, the Department will rely on the assurances of the company's independent accountants and auditors as the basis for calculating costs. See Fresh Atlantic Salmon from Chile, 68 FR 6878 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 13; Fresh Atlantic Salmon from Chile 2000, 65 FR 78472 (December 15, 2000) and accompanying Issues and Decision Memorandum at Comment 1; and Rubber from Mexico, 64 FR 14872, 14882 (March 29, 1999). We have included the total net foreign exchange gain or loss in the calculation of COP/CV for the final determination in accordance with respondents' normal books and records in accordance with Mexican GAAP which reasonably reflects the costs associated with the production and sale of the merchandise under consideration.

Comment 23: **Whether the Department Should Make a Monetary Correction**

LM argues that the Department's preliminary adjustment for inflation calculated in accordance with the Accounting Principles Commission of the Mexican Institute of Public Accountants Bulletin B-10 representing Mexican GAAP was contrary to evidence on the record, inconsistent with sound accounting principles, and contrary to the Department's practice. LM argues that the Department declined to make an inflation adjustment in Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review 65 FR 1593,1596 (January 11, 2000) (Oil Country Tubular Goods from Mexico) where the Department stated that "Circumstances do not warrant using the Department's high inflation methodology in this review. Therefore, we have deleted the inflation adjustment to costs of production."

Additionally, LM asserts the Department's decision in Oil Country Tubular Goods from Mexico not to adjust reported costs to reflect the B-10 inflation adjustment has been followed in subsequent proceedings involving Mexico. See *e.g.*, Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review, 66 FR 21311 (April 30, 2001)(Circular Welded Non-Alloy Steel Pipe from Mexico) and accompanying Issues and Decision Memorandum at Comment 3. Specifically the Decision Memorandum stated "In this proceeding we will follow the methodology used in Oil Country Tubular Goods from Mexico in our treatment of the B10 adjustment." LM states that Mexico's inflation rate during the POI was less than 10% and the facts in this case are similar to the facts in Oil Country Tubular Goods from Mexico and Circular Welded Non-Alloy Steel Pipe from Mexico and, as a result, the Department should follow its decisions in those cases for this investigation and not adjust the reported costs to reflect the B-10 inflation adjustment.

LM states that the Department's decision in Oil Country Tubular Goods from Mexico is logical and in accordance with sound accounting principles. LM opines that there is no basis for adjusting costs or prices in Mexican cases when there is no high inflation. LM asserts making such adjustments would be inconsistent with the manner in which the Department treats other economies where there is no significant inflation.

With regard to gain or loss on monetary position, Galvak and Hylsa contend that it is appropriate to include the entire gain or loss on monetary position because the gain or loss on monetary position reflects the sum of numerous calculations during the course of the year concerning the effects of inflation in each month on all of the company's monetary assets and liabilities, whether short-term or long-term, or originally denominated in domestic or foreign currency.

However, petitioners additionally argue that the Department should revise Galvak, Hylsa and LM's net interest expense to include only the current period amount of the monetary correction instead of the entire amount. Petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (August 30, 2002)(Wire Rod from Mexico) and accompanying Issues and Decision Memorandum at Comment 9, in support of their position.

Department's Position:

In this case, we have determined that the Mexican economy was not subject to high inflation because the annual inflation rate during the POI was less than 25 percent. As such, it would be inappropriate to apply the Department's high inflation methodology. Therefore, respondents were required to report product-specific POI weighted-average costs based on the amounts maintained in their normal books and records in accordance with Mexican GAAP. Mexican GAAP requires that the financial statements incorporate the effects of changing price levels irrespective of the inflation rate.

The gain or loss on monetary position adjustment is required by Mexican GAAP and represents the actual inflation included in the company's normal books and records. Therefore, the numerator of the net financial expense ratio represents the actual net interest expense of the company (*e.g.*, interest paid, net monetary gain or loss, and net foreign exchange gain or loss) and reasonably reflects the financial expense portion of the cost of production and sale of the merchandise under consideration. The total gain or loss on monetary position represents the purchasing power gain or loss that results from holding monetary assets and liabilities. We have determined that it is appropriate to account for the impact of inflation on the net monetary position, if the respondent makes these adjustments in their normal books and records, and in accordance with their home country GAAP.

Our final determination eliminates the constant currency adjustment from the calculation of COP/CV because the costs and prices used in the dumping analysis are not stated in constant currency amounts. In an investigation, for the purposes of identifying sales-below-cost transactions, the Department compares transaction-specific sale prices to the POI weighted- average costs. In a high inflation methodology, the Department compares transaction-specific sale prices to the monthly costs. It would be incorrect to calculate year-end constant currency costs and then compare these year-end constant currency costs to transaction-specific sale prices that occurred throughout the reporting period and had not been converted to constant currency. As such, these comparisons would lead to a distortion in the dumping analysis because they are not made on the same basis. Therefore, we believe that is appropriate to eliminate the constant currency adjustment from the COP/CV calculations.

Section 773(f)(1)(A) of the Act states that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated wit the production and sale of the merchandise." Thus, unless a company's normal books and records kept in accordance with home-country GAAP result in a distortion of the costs, the Department will rely on the assurances of the company's independent accountants and auditors as the basis for calculating costs. See Fresh Atlantic Salmon from Chile, 68 FR 6878 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 13; Fresh Atlantic Salmon from Chile 2000, 65 FR 78472 (December 15, 2000) and accompanying Issues and Decision Memorandum at Comment 1; and Rubber from Mexico, 64 FR 14872, 14882 (March 29, 1999). We have included the total net monetary gain or loss in the

calculation of COP/CV for the final determination in accordance with respondents' books and records in accordance with Mexican GAAP which reasonably reflects the costs associated with the production and sale of the merchandise under consideration.

We have not amortized the total gain or loss on monetary position for the final determination because our practice is to include the entire amount of the gain or loss on monetary position in the calculation of the net financial expense.

Moreover, we note that the gain or loss on monetary position and the net foreign exchange gain or loss, which occurred in Mexico in this case during the POI, are directly linked. That is, the same foreign-denominated debt caused both a foreign exchange gain or loss and a gain or loss on monetary position. A foreign exchange loss is driven by the devaluation of the peso, as compared to the currency in which the debt is denominated, whereas the gain on monetary position is driven by inflation in Mexico during the year. Including only an amortized portion of foreign exchange gains and losses and monetary gains and losses does not accurately reflect the respondent's coordinated efforts to manage its foreign currency exposure and does not reflect the financial results of the enterprise's foreign exchange management efforts adequately. Thus, consistent with our current practice of including in the financial expense calculation the entire net foreign exchange gain or loss and the gain or loss on monetary position, we included a comparable portion of the gain or loss on monetary position related to monetary assets and liabilities. See Silicomanganese from Brazil, 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 14; Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico, 68 FR 13260 (March 19, 2003) and accompanying Issues andDecision Memorandum at Comment 1; see also Fresh Atlantic Salmon from Chile, 68 FR 6878 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 13 (stating "{c}onsistent with 773(f)(1)(A) of the Act, the Department must account for the impact of inflation on a respondent's net monetary position if such adjustments are made in the normal books and records and do not distort the cost of production.") The practice of including monetary correction in accordance with Mexican GAAP was further followed in Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 9, Fresh Atlantic Salmon from Chile 2000, 65 FR 78472 (December 15, 2000) and accompanying Issues and Decision Memorandum at Comment 1, Rubber from Mexico, 64 FR 14872, 14882 (March 29, 1999) at comment 6 and Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile, 63 FR 56613, 56621 (October 22, 1998).

While we agree with respondent that this case does not fall into the category of high inflation, we disagree that no inflation adjustments should be made at all which respondent alludes to in the Oil Country Tubular Goods from Mexico, 65 FR 1593, 1595 (January 11, 2000) and Circular Welded Non-Alloy Steel Pipe from Mexico, 66 FR 21311 (April 30, 2001). In those cases we determined that the Mexican economy during the POR did not experience high inflation and therefore did not apply an inflation adjustment to the reported costs. We agree with that determination with respect to ignoring the adjustment which adjusts values to end-of-year pesos values. We believe as outlined above it is

reasonable to include the depreciation and monetary correction adjustment in the calculation of COP/CV. We are only incorporating certain inflation adjustments required by Mexican GAAP to be recognized in the company's financial statements which would distort the dumping analysis were they not included for the reasons enumerated above.

Comment 24: **Whether the Department Should Use Period of Investigation Data for Calculation of General and Administrative Expense and Interest Expense Rates**

The POI is divided equally between fiscal years 2002 and 2003 (*i.e.*, July to December 2002 and January to June 2003). Respondents argue that the Department should include data for both fiscal years in the calculation of the general and administrative (G&A) and interest expense ratios instead of using the data from 2002 alone. Respondents contend that there is no reason to consider either year to be more representative of conditions during the investigation period. Respondents also argue that there is no difference in the reliability of the data for either year because the audited financial statements for both years are available. Respondents assert that by using data solely from the 2002 fiscal year the Department ignores data relating to the half of the investigation period that fell in 2003 without any justification. As such, respondents argue that in order to ensure that the G&A and interest expense ratios used by the Department capture the actual experience of Galvak and Hylsa throughout the investigation period, the Department should revise its G&A and interest calculations to include the data from both fiscal years.

Petitioners assert that the Department properly used only 2002 data to calculate the G&A and interest expense ratios in this investigation. Petitioners contend that the Department's practice has been to calculate the G&A and interest expense rates over the closest corresponding fiscal year's audited financial statements and that this calculation measures the level of G&A and interest expenses associated with the company's production and sales over a full fiscal year. Petitioners argue that the basis for calculating these ratios over a full fiscal year is not because it is the exact period as the POI, but rather because using the annual costs include all year-end adjustments and expenses which are typically incurred unevenly throughout the year. Petitioners cite Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina, 60 FR 33539, 33549 (June 28,1995). Petitioners conclude that there is no indication that an average of 2002 and 2003 data would better reflect POI costs than 2002 data alone. Petitioners contend that in either case (*i.e.*, using the average of 2002 and 2003 data or using 2002 data alone) half of the period covered by the financial statements falls outside the POI and half falls within the POI.

Department's Position:

We agree with petitioners that the Department should use the fiscal year 2002 audited financial statements to calculate the G&A and financial expense rates. The Department's longstanding methodology has been to calculate the G&A and financial expense rates based on the audited annual

financial statements which most closely correspond to the POI, to account for seasonal fluctuations and year-end adjustments. See Final Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Taiwan, 67 FR 76721 (December 13, 2002) and accompanying Issues and Decision Memorandum at Comment 10. In instances where the POI or period of review is equally divided between two fiscal years, it has been the Department's practice to use the financial statements from the most recently completed fiscal year at the time the questionnaire response was submitted. See Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand, 68 FR 65247 (November 19, 2003) and accompanying Issues and Decision Memorandum at Comment 11. This practice enables the Department to calculate the G&A and financial expense ratios on a consistent and predictable basis between respondents, as well as segments of proceedings.[16]

Moreover, the financial statements that include the first six months of the POI are on the record earlier in the investigation, which affords parties more time to review and comment on the data. Thus, in accordance with our practice, we have continued to calculate Galvak and Hylsa's G&A and financial expense ratios based on the fiscal year 2002 audited financial statements. See *e.g.*, Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 7; see also Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold- Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France, 58 FR 37079 (July 9, 1993). Maintaining this methodology promotes a consistent, rational application of these period rates in our antidumping investigations and reviews.

Comment 25: **Whether the Department Should Accept a Layered General and Administrative Expense Calculation**

Respondents argue that the Department should accept their methodology for calculating Galvak and Hylsa's G&A expense ratios using a layered approach. Respondents explained that with this methodology the actual corporate G&A expenses incurred by each entity (*i.e.*, Alfa, Hylsamex, Hylsa, and Galvak) were allocated over each entity's consolidated cost of goods sold. Respondents argue that the methodology used for Galvak and Hylsa is consistent with the Department's longstanding practice and that it avoids the risk of distortions by using objective criteria to allocate actual expenses. Respondents contend that the Department has in the past expressed a reluctance to base its G&A

[16] Not all respondents may have finalized their 2003 financial statements in time for them to be used in their responses. The Department therefore has consistently used the 2002 financial statements across all respondents in this investigation to ensure equal treatment. Additionally, it is important to be consistent between proceedings so that parties can not pick and choose the statements that benefit them most.

expense rate calculations solely on the amounts included in the company's unconsolidated financial statements, citing Steel Wire Rod from Canada 59 FR 18791, 18795 (Apr. 20, 1994). In addition, respondents allege that in all previous proceedings that it has been involved in, Hylsa used and the Department has accepted, a layered calculation of its G&A expense ratio. Therefore, respondents assert that the Department should use the layered approach in computing the G&A expense rates for the final determination.

Petitioners assert that the Department maintains a reasonable method for calculating the G&A expense rate which is consistently applied from case to case, and it should not abandon its normal method of calculating the ratio (*i.e.*, based on unconsolidated financial statements) in this proceeding. Petitioners cite Certain Softwood Lumber Products from Canada, Final Determination of Sales at Less Than Fair Value, 67 FR 15539, 15542 (April 2, 2002)(Lumber) in support of their assertion. Petitioners contend that Galvak and Hylsa's citation to Steel Wire Rod from Canada concerning the use of consolidated financial statements to calculate the G&A ratio is inappropriate and inadequate in this situation.

Department's Position:

It is the Department's practice to calculate the G&A expense rate based on a respondent company's unconsolidated financial statements plus a portion of the parent company's G&A expenses. Because there is no definition in the Act of what a G&A expense is or how the G&A expense rate should be calculated, the Department has developed a consistent and predictable practice for calculating and allocating G&A expenses. This consistent and predictable method is to calculate the rate based on the unconsolidated financial statements of the respondent company including an allocated portion of the parent company's G&A expenses, not based on a parent company's consolidated financial statement. As a company's consolidated financial statements often include companies with entirely different corporate structures and in entirely different industries from that of the respondent, we consider it preferable to remain at a company-wide level that more closely represents the company and industry under investigation.

The Department's normal and consistent methodology for calculating a respondent's G&A expense ratio is reasonable, predictable and not results-oriented. To allow a respondent to choose between the Department's normal method and an alternative method would encourage respondents to adopt a results-oriented approach. That is, parties will only point out the other methods when it benefits them. See *e.g.* Lumber 67 FR 15539 (April 2, 2002) and accompanying Issues and Decision Memorandum at Comment 16. In the instant case, the portion of the parent companies' G&A expenses to be included should be the amount incurred on behalf of the reporting entity. Although we recognize that respondents have attempted to do so by adding Alfa and Hylsamex (*i.e.*, the parent companies), and Hylsa/Galvak's individual G&A rates, we do not find that this method reflects the most specific G&A expenses which the parent companies have incurred on behalf of Galvak and Hylsa. In Galvak and Hylsa's questionnaire responses, they deducted the actual corporate expenses charged

by the parent companies, Alfa and Hylsamex, to respondents. We disallowed that deduction and as a result included the corporate charges from respondents' books and records in the G&A expense rate calculation for the preliminary determination because we noted that these were the specific G&A expenses included in Galvak and Hylsa's own records for parent company corporate charges. Therefore, consistent with the preliminary determination, we continued to calculate Galvak and Hylsa's G&A expense rates based on their respective unconsolidated financial statements, including the corporate charges from the parent companies, for the final determination. See *e.g.*, Final Results of the New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy, 69 FR 18869 (April 9, 2004)(Pasta from Italy) and accompanying Issues and Decision Memorandum at Comment 6.

With respect to respondents' allegation that the Department did not find this error in prior proceedings in which Hylsa was a respondent, we note that in each proceeding, different issues can arise that were not contested in earlier proceedings. However, this does not preclude the Department from examining the issues in the current proceeding and making adjustments to the reported cost of production based on the Department's normal practice. As to respondents' citation to Steel Wire Rod from Canada, we note that in that proceeding the Department allocated the corporate overhead expenses to the respondent company based on the cost of goods sold of the parent company because those expenses were not allocated to the affiliates in the normal course of business. Because the parent companies' corporate charges were allocated to both Galvak and Hylsa in this case, we find that respondents' case cite does not relate to the situation in this proceeding.

Comment 26: **Whether a Reorganization Charge for Transfer of Administrative Activities to an Affiliate Should be Included as an Offset to General and Administrative Expenses**

Hylsa argues that certain income recognized by Técnica Industrial, S.A. de C.V. (TISA), a wholly owned subsidiary of Hylsa, which resulted from a reorganization of the relationship between Hylsa and TISA, should be included as an offset when calculating the G&A expense ratio. Hylsa asserts that it recorded a substantial amount of reorganization expenses while TISA in turn recorded corresponding income as part of the same reorganization and that to include the expenses and not the income in the G&A expense ratio would be unfair. Hylsa disagrees with the Department's suggestion in Hylsa's cost verification report that the income recorded by TISA should be ignored because G&A expenses are normally calculated based on a company's unconsolidated financial statements. Given the nature of the specific circumstances in this case considering only information on the unconsolidated financial statements would not properly reflect the real cost to Hylsa. Instead, Hylsa asserts that in order to reflect the total actual cost incurred, the Department should include only the net consolidated reorganization expense in its G&A expense ratio calculation.

Petitioners contend that in calculating the G&A expense ratio Hylsa improperly used consolidated G&A costs and cost of goods sold to derive the G&A expense ratio. Petitioners argue that the Department provided a reasonable method for calculating the G&A ratio which is consistently applied

from case to case, and the Department should not abandon its normal method of calculating the ratio (*i.e.*, based on unconsolidated financial statements) in this case. Petitioners cite Lumber 67 FR 15539, 15542 (April 2, 2002) in support of their assertion. Further, petitioners contend that it is not clear that the income and expense items that respondents cite are "two sides of the same reorganization" because the income and expense amounts differ. Additionally, petitioners state that if the income resulted from the same transactions from which the expenses were derived, the income as well as the expenses would be credited to Hylsa's unconsolidated accounts.

Department's Position:

As noted above in Comment 25, it has been the Department's long standing practice to calculate the G&A expense rate based on a respondent company's unconsolidated operations plus a portion of G&A expenses from the parent company. Further, we noted above in Comment 24 that we would review the period costs incurred in fiscal year 2002 to ensure that there were no unusual or non-recurring expenses that would not be reflective of a respondent's period costs in the normal course of business. The facts in this case have not sufficiently demonstrated that an exception is warranted. Expenses incurred for reorganization purposes between two affiliates is not unusual or non-recurring. In the instant case, the offset in question is not recorded in the respondent's unconsolidated books and records, nor is record evidence clear that the income on the affiliate's books and records is even related to the reorganization. Specifically, the amount shown as income to TISA on the consolidated financial statements does not appear to correspond to the amount claimed as an offset. Therefore, for the final determination, we have continued to calculate Hylsa's G&A expense ratio based on its unconsolidated financial statements which does not include the income offset recorded in TISA's financial statements.

Comment 27: **Whether Labor Charges for Affiliates Should Be Included in Hylsa's General and Administrative Expenses**

Hylsa claims that, as it had explained at verification, the G&A expenses in its accounting records and financial statements include the wages and salaries for the workers at Hylsa's subsidiaries Hylsa Norte and Hylsa Puebla. Further, Hylsa contends that, as also explained at verification, it charged Hylsa Norte and Hylsa Puebla for these wages and salaries and recorded the charges as sales revenue in its accounting records rather than as an offset directly against G&A expenses.

Hylsa argues that the wages and salaries for the workers at Hylsa Norte and Hylsa Puebla are not general and administrative expenses of Hylsa and should be excluded from the G&A calculation. Hylsa points out that in its preliminary determination the Department included all of the G&A expenses shown in Hylsa's financial statements, including the wages and salaries of the workers at Hylsa Norte and Hylsa Puebla, in its calculation of the G&A expense rate without any offset for the corresponding charges from Hylsa to these subsidiaries. Hylsa contends that because the wages and salaries for workers at the Hylsa Norte and Hylsa Puebla subsidiaries are not G&A expenses of Hylsa, the

Department should include an offset for the charges Hylsa made to these subsidiaries when calculating the G&A expense ratio.

Petitioners had no rebuttal comments.

Department's Position:

We agree that the labor charges attributable to Hylsa's subsidiaries Hylsa Norte and Hylsa Puebla should be offset by the revenue received by Hylsa from its affiliates. At verification, we examined support that Hylsa charged Hylsa Norte and Hylsa Puebla for wages, salaries, and other expenses and recorded the charges in its accounting records as sales revenue and not as a reduction of G&A expenses. In the preliminary determination, we erroneously included the labor charges when calculating the G&A expense ratio without any corresponding offset. For the final determination, we included the offset for these expenses in the calculation of the G&A expense ratio.

Comment 28: **Whether Gain on Debt Restructuring Should be Included on Interest Expense**

Respondents assert that income and expense items from Hylsa's financial statements related to the restructuring of debt, which the Department included in the calculation of Hylsa's G&A expense ratio, arose from a financing transaction and should properly be considered as part of the interest expense ratio calculation and not part of the G&A ratio calculation. The respondent also asserts that the gain on debt restructuring recognized by the Alfa group (*i.e.*, Hylsa's ultimate parent) related to the debt restructuring transaction should be included as an offset in the calculation of the interest expense ratio.

Respondents argue that to consider only the gains and losses in Hylsa's accounting records fails to capture the overall impact of this transaction. Respondents claim that although an overall net loss was recorded in Hylsa's accounting records for this transaction, the restructuring actually provided a substantial financial benefit to the Alfa group by reducing its indebtedness to outside lenders. The respondent alleges that the Alfa group recognized a net gain from this debt restructuring and that this amount should be included in the calculation of the interest expense ratio.

Petitioners contend that even if the Department is satisfied that the restructuring gain to which Hylsa cites related to debt restructuring, only the current portion of the gain should offset interest expense. The petitioner cites Certain Preserved Mushrooms From India, Final Results of Antidumping Duty Administrative Review, 68 FR 41303, (July 11, 2003)(Mushrooms from India) and accompanying Issues and Decision Memorandum at Comment 13, in support of its claim that the entire gain on debt restructuring does not qualify as an offset to interest expenses.

Department's Position:

We agree that the gain on debt restructuring relates to financing activities of the Alfa group and should be considered as part of the financial expense ratio calculation. We also agree that only the current portion of the gain should be included in the financial expense ratio.

During 2002 the debt of Hylsa and Hylsa's parent Hylsamex was restructured which resulted in some income and expense items included on Hylsa's 2002 financial statements. The transaction also resulted in a gain on debt restructuring included on Alfa's (*i.e.*, Hylsa and Hylsamex's ultimate parent) financial statements. For the preliminary results, we included the income and expense items related to debt restructuring, which were included on Hylsa's financial statements, in the calculation of the G&A expense ratio. However, for the final determination, because the restructuring is related to debt, we considered the expense a financing activity. Because we considered this transaction a financing activity we excluded the income and expense items from the calculation of the G&A expense ratio and included an amount for the restructuring in the financial expense ratio (*i.e.*, based on the parent company's, Alfa, audited consolidated financial statements) for the final determination.

In regard to petitioners' argument that only the current portion of the gain on debt restructuring should be allowed as an offset, we agree. It is the Department's practice to offset financial expenses only with the current portion of gain on debt restructure. See *e.g.*, Mushrooms from India, 68 FR 41303, (July 11, 2003) and accompanying Issues and Decision Memorandum at Comment 13. The debt restructure was a result of an agreement where almost all of the companies' debts were restructured and more favorable terms were obtained. Although the specific revised maturities for all of the debt that was restructured was not detailed in Alfa's 2002 financial statements, the loan maturities that were detailed were extended through 2010 for a total repayment period of eight years. As the benefit of the restructured debt covers multiple accounting periods through the maturities of the loans, we consider it appropriate to spread the related gain in order to properly match the gain with the active repayment of the debt. Thus, for the final determination, the Department has amortized the gain on debt restructure over a period of eight years and included as an offset to the financial expenses the portion of the gain that is current to this POI.

Comment 29: Whether Bonus Compensation Should be Included in Calculating Hylsa's General and Administrative Expense Ratio

Petitioners contend that bonus compensation, classified as extraordinary and excluded from reported costs, is a cost that is related to the operations of the company and should be included in the G&A expense ratio.

Respondents had no rebuttal comments.

Department's Position:

Bonus compensation expenses represent costs of services that individuals have provided to the

company. We do not consider such services to be unusual in nature or infrequent in occurrence. Rather, such compensation is common in the manufacturing industry. Therefore, we agree with petitioners that these expenses should be included when calculating the G&A ratio.

Comment 30: Whether Certain Product Costs Were Misclassified

Petitioners reiterated Hylsa's cost verification report that states "during verification we learned that Hylsa misclassified certain product costs related to products sold to third countries rather than including the costs for these products in reported costs". Petitioners contend that in order to accurately establish costs all misclassifications should be corrected in making the final determination.

The respondent had no rebuttal comments.

Department's Position:

During verification we found that Hylsa mis-classified certain costs. Therefore, we adjusted Hylsa's reported costs to correct these mis-classifications for the final determination.

Comment 31: Whether the Value of Iron Ore Should Reflect the Higher of Transfer Price or Production Costs

Petitioners reiterated Hylsa's cost verification report that states that the Department found from its testing that the average per-unit transfer price of iron ore purchased from affiliates was less than the average cost of production of iron ore produced by the affiliates. Petitioners further point out that the report states that because "iron ore is a major input in the production of the steel coil (used to produce subject merchandise), the statute requires that for the dumping analysis the major inputs should be valued at the higher of transfer price, market price, or cost of production". Petitioners, therefore, contend that the Department should value iron ore at the higher of transfer price or production costs in making the final determination.

The respondent had no rebuttal.

Department's Position*:*

Section 773(f)(3) of the Act states that in the case of a transaction between affiliated persons involving the production by one of such persons of a major input, the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input. In accordance with section 351.407(b) of the Department's regulations, in applying the major input rule, the Department will normally determine the value of a major input purchased from an affiliated person based on the higher of the transfer price between affiliates, the market price for the input, or the

affiliate's cost of production for the purchased input.

Hylsa purchases iron ore, which is a major input in the production process of steel coil, from affiliates. We compared the cost of production and the transfer price of the iron ore produced by and purchased from affiliates (*i.e.*, no iron ore was purchased from unaffiliated suppliers). We found from our testing at verification that the average cost of production of iron ore produced by affiliates was higher than the transfer price that was used to report costs. Therefore, for the final determination, we adjusted the reported cost of production of iron ore to reflect the higher affiliated cost of production.

Comment 32: **Whether LM's Financial Expenses are Overstated**

LM states that for the preliminary determination the Department overstated LM's reported financial expense. LM states that in the Cost Adjustment Memorandum the Department increased the reported financial expenses by adding expenses associated with monetary correction, exchange gains and losses, interest paid to affiliated companies and bank fees. However, LM notes that the monetary correction was a negative figure and should have been subtracted, not added when calculating the net financial expenses. LM agrees that the adjustments as described at pages 18-19 of the Department's Cost Verification Report (CVR) properly reflect the net financial expense ratio.

Petitioners argue that only the current portion of LM's gain on monetary correction should be included as an offset to net interest expense. Petitioners cite Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 9, in support of their position.

Department's Position:

We agree with LM that the calculation of the financial expense ratio as detailed in the CVR at pages 18-19 is correct. In the preliminary determination the monetary correction was added to the financial expense ratio when it should have been subtracted. For further details regarding the monetary correction see Comment 21 above on inflation.

Comment 33: Whether General and Administrative Expenses Should be Reduced to Correct Double Counting

LM states the first day corrections provided at the cost verification explain the inadvertent double counting of indirect selling expenses. LM advocates reducing the reported G&A to account for this error.

Petitioners did not comment.

Department's Position:

We agree that indirect selling expenses were double counted and should be deducted from the reported G&A. In addition, we added profit-sharing expenses for fiscal year 2002 to G&A as this represents additional compensation for all employees of the company. We have previously included cash and stock bonuses to employees, directors and supervisors in COP/CV in the Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan, 64 FR 17336, 17337-17338 (April 9, 1999).

Comment 34: **Whether Overhead Expenses from Affiliates are Overstated**

LM argues that it improperly reported the fees paid to affiliates for services. LM asserts that the correct value for these services is the actual wages paid by its affiliates to the employees. LM claims that as a result of using its payments to affiliated companies rather than the actual wages paid to employees, it overstated overhead costs.

Petitioners did not comment.

Department's Position:

We disagree that the reported transfer prices should be disregarded. Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount usually reflected in the market under consideration. We have not found this to be the case in this instance. In applying the statute, the Department normally compares the transfer price paid by the respondent to affiliated parties for production inputs to the price paid to unaffiliated suppliers, or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. See *e.g.*, Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from Korea, 68 FR 59366 (October 15, 2003) and accompanying Issues and Decision Memorandum at Comment 5. If the affiliated supplier made no such sales during the POI and this price is also unavailable, then we may consider other market values that are reasonably available and on the record. LM did not purchase the same services from an unaffiliated party during the POI nor is there information on the record that the affiliate sold the same services to unaffiliates during the POI. Thus, because we were unable to establish a market price based on our first or second preference outlined above, we used the cost of services provided by that affiliate during the POI as a reasonably available alternative for market value which is on the record. Our analysis demonstrates that the transfer price was higher than the cost of the services provided by the affiliate and therefore we have not disregarded the transfer price under section 772(f)(2) of the Act.

Comment 35: Whether Yield Loss Should be Adjusted

LM reported that it inadvertently omitted yield loss in its cost response on the first day of the cost

verification. Furthermore, LM states that the CVR reflects the correct yield loss that LM inadvertently omitted.

LM further asserts that the production quantities used for LM's cost response were correct and the revised production quantities provided as cost verification exhibit C-13 were in error. LM adds that during verification it was discovered that the production quantities used for LM's cost response were correct and that the revised production quantities, which were not used for the cost files, were in error since they excluded material that while painted was not further converted into prime, *naranaja* or second quality products. As a result, LM argues that the yield factors provided as a correction on the first day of verification include yield losses through final production.

Petitioners assert that for the final determination the Department should adjust LM's cost for yield loss to reflect the fact that greater than one ton of input is needed to produce a ton of finished product.

Department's Position:

We agree that yield losses should be incorporated in the reported costs, but disagree with LM that its revised yield loss figures incorporate yield loss for labor and fabrication. Specifically, we agree with LM that the verified quantities in cost verification exhibit 13 are also included in exhibit 4 of the April 6, 2004, supplemental section D response. The revised quantities in cost verification exhibit 13 differ from the quantities reported in supplemental section D exhibit 4 due to work-in-process inventories. The Department verified LM's raw material yield loss by gauge of steel coil. However, the per gauge yields reported by LM are based on the yield loss for steel coil only and do not include yields incurred in processing after the slitting process. LM has not presented the Department with any evidence that would reflect yield loss at other stages in the production process such as the painting and welding processes. Therefore, to insure that yield loss is accounted for through final production, we applied the steel coil yield loss percentage to the total cost of manufacturing.

Comment 36: Whether Labor Costs Excluded Social Security Taxes

LM argues that the cost verification report incorrectly states that LM's labor costs excluded an expense for Mexican social security taxes. LM claims this statement is incorrect because during verification company officials provided the verification team with documents that supported the reconciliation of the cost information to the general ledger and the financial statements. LM further states that the general ledger cost center report for direct labor included the expense for social security.

Petitioners did not comment.

Department's Position:

Upon review of the chart of accounts, the company's cost reconciliation and the labor cost center

report, we agree that LM's product specific costs included all direct labor costs including an amount for social security.

Comment 37: Whether the Total Cost of Manufacturing Should be Adjusted for an Unreconciled Difference

Petitioners claim that the Department should adjust for the unreconciled difference between the total reported cost of manufacturing (TOTCOM) from Prolamsa's cost accounting system and the extended TOTCOM reported to the Department. To support their claim, petitioners cite Stainless Steel Bar from Italy, 67 FR 3155 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 50, where the Department adjusted respondent's TOTCOM for unreconciled differences.

Respondent agrees that an adjustment is warranted, but argues that the full amount of the unreconciled difference should be allocated across the costs of subject and non-subject merchandise because the difference relates to all products. The respondent states that the Department incorrectly assumes the entire difference relates to the subject merchandise. Therefore, respondent argues for adjusting the submitted TOTCOM by applying a ratio calculated by dividing the unreconciled difference by the cost of manufacturing for both subject and non-subject merchandise rather than adjusting the submitted TOTCOM by applying a ratio calculated by dividing the unreconciled difference by TOTCOM (*i.e.*, cost of manufacturing of only subject merchandise).

Department's Position:

The Department's normal treatment of unreconciled cost differences is to include such differences in the respondent's reported costs. Petitioners' reference to Stainless Steel Bar from Italy documents this treatment; see also Pasta from Italy, 69 FR 18869, (April 9, 2004) and accompanying Issues and Decision Memorandum at Comment 2; Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38785 (July 19, 1999). The reasoning behind this treatment is that it is possible the entire unreconciled amount relates to subject merchandise. The respondent does not point to any record evidence that establishes that the unreconciled difference relates to both subject and non-subject merchandise. Therefore, for the final determination we have increased Prolamsa's reported TOTCOM for the full amount of the unreconciled difference.

Comment 38*:* Whether Freight, Insurance, and Handling Charges Should be Included in Reported Costs

Petitioners argue that Prolamsa did not include the costs involved in importing raw material (*i.e.*, freight, insurance, and handling charges) in the reported costs submitted to the Department. Petitioners believe that those costs are part of the cost of materials and that the Department should adjust Prolamsa's costs by including those amounts.

Respondent does not disagree that the costs involved in importing raw material were excluded and should be included as a cost of raw material. Respondent argues that, as in the unreconciled difference issue before, the freight, insurance, and handling charges should be allocated across the costs of subject and non-subject merchandise because the difference relates to raw material used to produce all products manufactured by Prolamsa. Respondent argues that the Department's assumption that the expenses relate to raw material used to produce only subject merchandise is incorrect. Therefore, respondent argues for adjusting the submitted TOTCOM by applying a ratio calculated by dividing the total of freight, insurance and handling charges by the cost of manufacturing for both subject and non-subject merchandise rather than adjusting the submitted TOTCOM by applying a ratio calculated by dividing the total of freight, insurance and handling charges by TOTCOM (*i.e.*, cost of manufacturing of only subject merchandise).

Department's Position:

Freight, insurance, and handling charges are costs which Prolamsa incurred in transporting raw material to the production plant and are part of the TOTCOM. The costs are not included in Prolamsa's cost accounting system and therefore must be added in order to reconcile to TOTCOM from Prolamsa's books. Company officials presented this difference as a reconciling item and did not allocate these costs to particular products. Similar to the unreconciled difference above, because respondent has not identified which portion of these costs are related to subject merchandise and which portion are related to non-subject merchandise, we have increased the reported TOTCOM by the total costs involved in importing raw materials. We have included the total amount because it is possible the entire unreconciled amount relates to subject merchandise. Prolamsa does not point to any record evidence that establishes that these costs relate to both subject and non-subject merchandise.

Comment 39: Whether the Department Should Correct Minor Errors Relating to Total Cost of Manufacturing

Petitioners encourage the Department to correct minor errors in the submitted data identified in Prolamsa's cost verification report.

Respondent did not comment on this issue.

Department's Position:

We note that the respondent submitted new data files after the cost verification which incorporated corrections to the minor data errors identified in the cost verification report. Thus, there is no need to make any additional adjustments to correct for these errors in the final determination.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final determination and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree_____ Let's Discuss_____

_____
James J. Jochum
Assistant Secretary
for Import Administration

_____
Date